

## **Title 16 LAND USE and DEVELOPMENT CODE**

### **Chapter 16.1 GENERAL**

#### **16.1.1 Purpose.**

This title is designed for all the purposes of zoning embraced in Maine Revised Statutes, and has been created as an integral part of a growth management program, comprehensive planning, and implementation process for the Town to promote the health, safety and general welfare of its residents.

Among other things, zoning is designed to:

1. Encourage the most appropriate use of land and water throughout the Town;
2. Promote traffic safety;
3. Provide safety from fire and other elements;
4. Provide adequate light and air;
5. Prevent overcrowding of real property;
6. Prevent development in unsuitable areas;
7. Promote an adequate transportation and circulation system;
8. Control and manage the coordinated development of un-built areas;
9. Encourage the formation of community units;
10. Provide an allotment of land area in new developments sufficient for all the requirements of community life;
11. Conserve energy and natural resources and protect the environment;
12. Preserve land values; and,
13. Provide for adequate public services.

#### **16.1.2.1 Title.**

This title is known, and may be cited as, the “Land Use and Development Code of the Town of Kittery, Maine.”

#### **16.1.2.2 Application of Title.**

The provisions of this Code pertain to all the land and water areas as herein defined within the boundaries of the Town.

#### **16.1.3 Responsibility.**

The Planning Board administers this title and delegates duties as prescribed herein.

#### **16.1.4 Planning Board.**

##### **16.1.4.1 Appointment and Composition.**

A. The Planning Board is established by the Town Charter, Article VIII, Section 8.01, Planning, and applicable state statutes.

B. The Board consists of seven (7) members, who are Kittery residents serving staggered terms of office of three years.

C. Members of the Board are appointed by the Town Council.

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(With amendments Ordained 9/26/11; 1/23/12; 5/30/12; 9/24/12; 3/25/13; 6/10/13; 1/27/14)

- D. A municipal officer, or spouse thereof, may not serve as a member of the Board.
- E. Members serve until their successors are appointed and qualified.
- F. The number of consecutive terms by any Board member is limited by Section 8.01(3) of the Town Charter.
- G. A member of the Board may be dismissed for cause by the Town Council before the expiration of such member's term after notice and hearing.
- H. Vacancies are filled by Town Council appointment for the unexpired term.

### **16.1.4.2 Powers and Duties.**

- A. The Board shall elect annually a chairperson and vice chairperson from its membership and a secretary. It is the duty of the secretary to keep and maintain a permanent record of all meetings of the Board, and show the vote of each member upon each question.
- B. A quorum consists of four or more members. All decisions must be made by a minimum of four like votes, except on procedural matters.
- C. Adopt bylaws to govern routine Board proceedings and set agendas and hold meetings to perform duties.
- D. Any question of whether a particular issue involves a conflict of interest sufficient to disqualify a member from voting thereon is decided by a majority vote of the members present, except the member who is being challenged, who may not vote on the issue.
- E. All records of the Board are public records, except as excluded under 1 M.R.S. §402 (3) (A)-(O), the Maine Freedom of Access (Right to Know) statute.
- F. The Board is to:
  - 1. Perform duties as provided by law.
  - 2. Hear and decide on required development plans including special exception use requests that require Planning Board review using the Development Application and Review procedures and criteria and other provisions in this Code.
  - 3. Prepare and recommend for Council adoption a Comprehensive Plan and initiate Plan implementation by zoning ordinance, other land use and development regulations, and other means; and monitor and report on Plan implementation progress.

### **16.1.5 Board of Appeals.**

#### **16.1.5.1 Appointment and Composition.**

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(With amendments Ordained 9/26/11; 1/23/12; 5/30/12; 9/24/12; 3/25/13; 6/10/13; 1/27/14)

- A. The Board of Appeals is established by the Town Charter, Article VIII, Section 8.04, and 30-A M.R.S. §2691.
- B. The Board consists of seven (7) members, who are Kittery residents serving staggered terms of office of three years.
- C. Members of the Board are appointed by the Town Council.
- D. A municipal officer, or spouse thereof, may not serve as a member of the Board.
- E. Members serve until their successors are appointed and qualified.
- F. The number of consecutive terms by any Board member is limited by Section 8.01(3) of the Town Charter.
- G. A member of the Board may be dismissed for cause by the Town Council before the expiration of such member's term after notice and hearing.
- H. Vacancies are filled by Town Council appointment for the unexpired term.

### **16.1.5.2 Powers and Duties.**

- A. To elect annually a chairperson and vice chairperson from its membership and a secretary. It is the duty of the secretary to keep and maintain a permanent record of all meetings of the Board, and show the vote of each member upon each question.
- B. A quorum consists of four or more members. All decisions must be made by a minimum of four like votes, except on procedural matters.
- C. Adopt bylaws to govern routine Board proceedings and set agendas and hold meetings to perform duties.
- D. Any question of whether a particular issue involves a conflict of interest sufficient to disqualify a member from voting thereon is decided by a majority vote of the members present, except the member who is being challenged, who may not vote on the issue.
- E. All records of the Board are public records, except as excluded under 1 M.R.S. §402 (3) (A)-(O), the Maine Freedom of Access (Right to Know) statute.
- F. The Board is to:
  - 1. Perform duties as provided by law.
  - 2. Administrative Decision Appeal: Hear and decide on an administrative decision appeal where it is alleged by an aggrieved party that there is an error in any order, requirement, decision or determination made by the Code Enforcement Officer in review of an action on a permit application under this Code.

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3. Variance Request: Hear and decide on a variance request within the limitations set forth in this Code and 30-A M.R.S. §4353(4).

4. Miscellaneous Variation Request: To hear and decide on a miscellaneous variation request to permit variation in:

- a. Nonconformance as prescribed in Article III of Chapter 16.7;
- b. Standards contained in Article IX of Chapter 16.8, Parking, Loading and Traffic or Section 16.8.10.3 Sign Violation and Appeal; or
- c. Accessory dwelling unit standards per Article XXV of Chapter 16.8.
- d. Special Exception Use Request: Hear and decide on a special exception use request not requiring Planning Board review per development and site review thresholds and using the Development Application and Review (Chapter 16.10) procedures and review criteria and other provisions in this Code.

### **16.1.6 Port Authority.**

#### **16.1.6.1 Appointment and Composition.**

A. The Port Authority is established by Maine Private and Special law 1961, Chapter 163, as amended, and Town Charter, Article IX.

B. The Port Authority consists of seven (7) members, who are Kittery residents serving staggered terms of office of five years.

C. Members of the Port Authority are appointed by the Town Council.

D. A municipal officer, or spouse thereof, may not serve as a member of the Port Authority.

E. Members serve until their successors are appointed and qualified.

F. No member shall serve more than 2 consecutive terms of 5 years. Any member who has served 2 consecutive terms of 5 years is ineligible to serve on the Board for a period of 1 year. Computation of term limits commences with the first term of 5 years following the effective date of this provision. Computation of term limits does not include service prior to the effective date of this provision nor to terms of fewer than 5 years after the effective date.

G. A member of the Port Authority may be dismissed for cause by the Town Council before the expiration of such member's term after notice and hearing.

H. Vacancies are filled by Town Council appointment for the unexpired term.

**16.1.6.2 Powers and Duties.**

A. To elect annually a chairperson and vice chairperson from its membership and a secretary. It is the duty of the secretary to keep and maintain a permanent record of all meetings of the Port Authority, and show the vote of each member upon each question.

B. A quorum consists of four or more members. All decisions must be made by a minimum of four like votes, except on procedural matters.

C. Adopt bylaws to govern routine Port Authority proceedings and set agendas and hold meetings to perform duties.

D. Any question of whether a particular issue involves a conflict of interest sufficient to disqualify a member from voting thereon is decided by a majority vote of the members present, except the member who is being challenged, who may not vote on the issue.

E. All records of the Port Authority are public records, except as excluded under 1 M.R.S. §402 (3) (A)-(O), the Maine Freedom of Access (Right to Know) statute.

F. The Port Authority is to:

1. Perform duties as provided by law.

2. Where Town Council action is required under the Wharves and Weirs statute, the Council may appoint the Port Authority as its designee for on-site inspection and to issue a written report on the same to the Council.

**2. Water Area Development Powers and Duties.**

a. The Port Authority is to provide advice to the Planning Board on development applications dealing with piers, wharfs, marinas and other uses projecting into water bodies.

b. Where Port Authority review is required, such review must be completed prior to Planning Board review.

c. Port Authority review and approval authority under this Code applies to structures extending into a water body beyond the mean high water line or the upland edge of a coastal wetland and extends from the water body to the mean high water line or upland edge of a coastal wetland.

d. The Port Authority may approve, for convenience of access to a pier from land upland of the mean high water line or the edge of a coastal wetland, an extension of the pier that is the shortest practicable extension at its nominal height and width. All other structures upland of, and abutting or built on or over a structure extending into a water body beyond the mean high water line or the edge of a coastal wetland, require Planning Board approval. Only one pier, ramp and float structure is permitted on any noncommercial or nonindustrial lot.

e. Where the Planning Board is the lead reviewing authority, a shorefront development plan must be submitted for Planning Board approval. A Port Authority ruling on the shorefront development plan's

conformance with Port Authority rules and regulations and navigational aspects of any proposed pier, ramp and float system or principal marine structure is required prior to Planning Board approval.

- f. Only functionally water-dependent uses are allowed on, over, or abutting a pier, wharf, or other structure beyond the normal high-water line. The standards contained in Section 16.8.15.1 are to be met.

#### **16.1.7 Conflicting Requirements.**

##### **16.1.7.1 Conflict within This Title.**

Where the requirements of this Code are in conflict with each other, the most restrictive, or that imposing the higher standards governs.

##### **16.1.7.2 Conflict with Other Statutes.**

Wherever the requirements of this Code are at variance with the requirements of any other lawfully adopted rules, regulations, ordinances, deed restrictions or covenants, the most restrictive, or that imposing the higher standards governs.

#### **16.1.8 Severability.**

In the event that any Section, subsection or any portion of this Code is declared by any court of competent jurisdiction to be invalid for any reason, such decision does not affect the validity of any other Section, subsection or other portion of this Code; to this end, the provisions of this Code are declared to be severable.

#### **16.1.9 Amendments.**

No amendments to this title may be adopted until after the Planning Board and the Town Council have held a public hearing thereon. Public notice of the hearing must be published in a newspaper of general circulation in the Town at least seven days prior to the public hearing. Said amendments are effective as provided by the Town Charter.

## **Chapter 16.2 DEFINITIONS**

### **16.2.1 Purpose.**

Except where specifically defined in this chapter, all words used in this title carry their customary dictionary meanings. Words used in the present tense include the future and the plural includes the singular; the word “lot” includes the word “plot”; the word “building” includes the word “structure”; the words “shall” or “must” are always mandatory; “occupied” or “used” are considered as though followed by the words “or intended, arranged or designed to be used or occupied”; and, gender-specific words (e.g., she, he, his, hers) include the opposite sex equivalent.

### **16.2.2 Definitions.**

As used in this title:

**Abuts** means that which is contiguous to, or shares, a common boundary line.

**Abutter** means the owner of a property that is contiguous to or shares a common boundary line.

**Abutting property** as used herein, relates solely to the notification of property owners who must be notified in writing when new development or re-development is proposed within one hundred fifty (150) feet of their property boundary(ies). This notification must include inter tidal land below the normal high-water line, but not that land beyond one hundred (100) rods (one thousand six hundred fifty (1,650) feet) distant from the normal high water line, or that land below the normal low water line. Where question exists regarding ownership of intertidal lands, consult Figure 1 for Chapter 16.2, entitled, “Formula for Determining Ownership of Intertidal Land as a Guide for Identifying Abutters,” at the end of this chapter.

**Accessory building** means a subordinate building on the lot, the use of which is incidental to that of the main or principal building.

**Accessory Dwelling Unit (ADU)** means an apartment which is part of an existing structure on the property where the owner of the property occupies one of the units. The accessory dwelling unit may be rented so that the owner-occupant may benefit from the additional income. The owner may also elect to occupy the accessory dwelling unit and rent the principal dwelling unit.

**Accessory structure** means a structure that is subordinate to and serves a principal building or use on the lot.

**Accessory use** means a use customarily incidental and subordinate to the principal use and located on the same lot with such principal use.

**Adjacent grade** means the natural elevation of the ground surface prior to construction next to the proposed walls of a structure. (Ordained 9/26/11; effective 10/27/11)

**Adult entertainment establishment** means any business in any use category, a substantial or significant portion of which consists of selling, renting, leasing, exhibiting, displaying, or otherwise dealing in materials, actions, and/or devices of any kind which appeal to prurient interest and which depict or describe specified sexual activities including but not limited to:

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1. Live entertainment, books, magazines, periodicals or other printed matter, or photographs, films, motion pictures, video cassettes or video reproductions, slides, or other visual representations which are characterized by the depiction or description of “specified sexual activities,” or
2. Instruments, devices, or paraphernalia, which are designed for use in connection with “specified sexual activities.”

For the purpose of this definition “specified sexual activities” means:

- a. Human genitals in a state of sexual stimulation or arousal;
- b. Acts of human masturbation, sexual intercourse or sodomy, fondling or other erotic touching of human genitals, pubic region, buttocks or female breasts.

**Aggrieved party** means an owner of land whose property is directly or indirectly affected by the granting or denial of a permit or variance under this title; a person whose land abuts land for which a permit or variance has been granted; or any other person or group of persons who have suffered particularized injury as a result of the granting or denial of such permit or variance.

**Agriculture** means the production, keeping or maintenance for sale or lease, of plants and/or animals, including but not limited to: forages and sod crops; grains and seed crops; dairy animals and dairy products; poultry and poultry products; livestock; fruits and vegetables; and ornamental and greenhouse products. Agriculture does not include forest management and timber harvesting activities.

**Alternative tower structure** means, but is not limited to clock towers, bell steeples, utility/light poles, water towers, and similar alternative-design mounting structures that camouflage or conceal the presence of antennas or towers, referred to by the industry as “stealth” technology.

**Antenna** means any apparatus designed for telephonic, radio, television, or similar communications through the sending and/or receiving of electromagnetic waves.

**Apartment** means a room or set of rooms for rent, fitted especially with housekeeping facilities and used as a single dwelling unit.

**Apartment building** means a building arranged, intended or designed to be occupied by three or more families each living in its own separate dwelling unit.

**Aquaculture** means the growing or propagation of harvestable freshwater, estuarine, or marine plant or animal species.

**Area of a shallow flooding** means a designated AO and AH zone on a community’s Flood Insurance Rate Map (FIRM) with a one percent or greater annual chance of flooding to an average depth of one to three feet where a clearly defined channel does not exist, where the path of flooding is unpredictable, and where velocity flow may be evident. Such flooding is characterized by ponding or sheet flow.

(Ordained 9/26/11; effective 10/27/11)



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(With amendments Ordained 9/26/11; 1/23/12; 5/30/12; 9/24/12; 3/25/13; 6/10/13; 1/27/14)

**Area of special flood hazard** means the land in the floodplain having a one percent or greater chance of flooding in any given year, as specifically identified in the Flood Insurance Study cited in 16.9.8.3, Establishment.

(Ordained 9/26/11; effective 10/27/11)

**Art studio/gallery** means enclosed place for the exhibition, production and sales of art.

**Banner** means any sign of lightweight fabric or similar material that is mounted for display at one or more edges.

**Basal area** means the area of a tree stem derived by measuring the diameter of a standing tree measured 4.5 feet from ground level and inclusive of bark.

**Base flood** means the flood having a one percent chance of being equaled or exceeded in any given year, commonly called the one hundred (100) year flood.

(Ordained 9/26/11; effective 10/27/11)

**Basement** means an area below the first floor having a floor-to-ceiling height of 6 feet or more and 50% of its volume below the existing ground. Basements will not be permitted for use as sole living quarters within a dwelling, but may be used as living area, storage or garage space.

**Bed and breakfast** means a home occupation in a single-family dwelling in which lodging or lodgings with meals served before noon are offered to the general public for compensation, offering no more than six bedrooms for lodging purposes.

**Best Management Practices (“BMP”)** means schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to prevent or reduce the pollution of water bodies. BMPs also include treatment requirements, operating procedures, and practices to control plant site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw material storage.

**Billboard** means the surface of any building or structure which is available for hire for advertising goods or services not provided on premises. Official business directional signs (OBDS) are not considered billboards.

**Board of Appeals** means the Board of Appeals of the Town of Kittery and may be referred to as the BOA.

**Boathouse** means a building used exclusively for the keeping, repairing and maintenance of boats.

**Boat launching facility** means a facility designed primarily for the launching and landing of watercraft, and which may include an access ramp, docking area, and parking spaces for vehicles and trailers.

**Boat yard** means a business or gainful occupation where boats are hauled, stored, repaired and/or constructed.

**Breakaway wall** means a wall that is not part of the structural support of the building and is intended through its design and construction to collapse under specific lateral loading forces, without causing damage to the elevated portion of the building or supporting foundation system.

(Ordained 9/26/11; effective 10/27/11)

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**Brook** means a channel between defined banks including the floodway associated floodplain wetlands where the channel is created by the action of surface water and characterized by the lack of upland vegetation or presence of aquatic vegetation and by the presence of a bed devoid of topsoil containing water-borne deposits on exposed soil, parent material, or bedrock.

**Buffer** means a combination of physical space and vertical elements, such as plants, berms, fences, or walls, the purpose of which is to separate and screen incompatible land uses from each other.

**Buffer area** means a neutral area separating conflicting areas.

**Building** means any structure having a roof supported by columns or walls and intended for the shelter, housing, or enclosure of persons, animals, or property. Each portion of a building, separated from other portions by a fire wall, is considered as a separate structure.

**Building frontage** means linear footage along the face of the building containing the main public entry, commonly labeled “front elevation” on building plans.

**Building materials and garden supply** means a retail establishment primarily engaged in selling lumber and other building materials; paint, glass, floor covering, and wallpaper; hardware, drapery and upholstery, flowers and/or nursery stock, lawn and garden supplies; modular homes and mobile homes.

**Business** means, for the purposes of the sign regulations, any corporation, trust, partnership, or other verifiable legal entity with the object of gain, benefit, or advantage.

**Business and professional offices** means a building, or portion thereof, in which there is located the offices of a profession or business including, but not limited to, banks, insurance, realtors, attorneys, appraisers, engineers, architects, landscape architects, accountants, dentists, optometrists, and physicians.

**Business facility** means, for the purposes of the sign regulations, a workplace of a business other than an employee's, or employer's, personal residence.

**Business services** means establishments primarily engaged in providing services to business enterprises on a fee or contract basis including, but not limited to, advertising, credit agencies, photocopying, commercial graphics, computer programming, cleaning and maintenance services, employment agencies, data processing, consulting and public relations, security and business equipment rental.

**Campground** means any area or tract of land use to accommodate two or more visitors, including tents, trailers, or other camping outfits, not to be used as permanent residence.

**Canopy, tree** (tree canopy) means the more or less continuous cover formed by tree crowns in a wooded area.

**Certificate of compliance** means a document signed by the Code Enforcement Officer stating that a structure is in compliance with all of the provisions of this 16.9.8.1, et seq.  
(Ordained 9/26/11; effective 10/27/11)

**Certificate of occupancy** means a permit issued by the Code Enforcement Officer that authorizes the recipient to make use of property in accordance with the requirements of this Code and applicable state and federal requirements.

**Character** means the main or essential nature especially as strongly marked and serving to distinguish.

**Clear-cut** means any timber harvesting on a forested site greater than one acre in size which over a ten (10) year period results in an average residual basal area of trees over six inches in diameter of less than thirty (30) square feet per acre, unless one or both of the following conditions exist:

1. If, after harvesting, the average residual basal area of trees over one inch in diameter measured at 4.5 feet above the ground is thirty (30) square feet per acre or more, a clear-cut does not occur until the average residual basal area of trees six inches or larger measured at 4.5 feet above the ground is less than ten (10) square feet per acre; or
2. After harvesting, the site has a well-distributed stand of trees at least five feet in height that meets the regeneration standards applicable under 12 M.R.S. chapter 805, §8869.1.

**Cluster residential development** means a form of land use improvements and/or change in which the dimensional requirements are reduced below that normally required in the zoning district in which the land use improvements and/or change is located, in return for the provision to set aside a portion of the tract as of permanent open space and other environmental enhancements owned and maintained jointly in common by individual lot/unit owners, the Town, or a land conservation organization.

**Cluster mixed-use development** means a form of land use improvements and/or change, with residential and commercial elements in mixed-use or single-use buildings, in which the dimensional requirements are reduced below that normally required in the applicable zone in return for a requirement providing traffic improvements, utility extensions, permanent open space, and other such improvements that the Planning Board may determine contribute to the enhancement of the project and/or the surrounding environment.

**Coastal wetland** means all tidal and sub-tidal lands; all lands below any identifiable debris line left by tidal action; all lands with vegetation present that is tolerant of salt water and occurs primarily in a salt water or estuarine habitat; and any swamp, marsh, bog, beach, flat, or other contiguous low land which is subject to tidal action during the maximum spring tide level as identified in tide tables published by the National Ocean Service. Coastal wetlands may include portions of coastal sand dunes.

**Code Enforcement Officer (CEO)** means the person duly authorized by the Town to carry out the duties as prescribed herein and in the Town administrative code.

**Co-location** means the location of more than one telecommunications facility (use) on a tower or alternative tower structure.

**Commercial fisheries/maritime activities (use)** means the active use of lands, buildings, wharves, piers, floats, docks or landings with the principal intent of such activity being the production of income by an individual or legal business entity through the operation of a vessel(s). This activity may be either a principal or accessory use as herein defined.

**Commercial greenhouse** means a building or structure made primarily of transparent or translucent material used by a business or in the production of income that is designed and/or used for the indoor propagation and/or cultivation of plants.

**Commercial/industrial and/or fisheries use structure** means a structure which is used by a business entity, Port Authority, or municipality having frontage on navigable water and, as its principal use, provides for hire to the general public, offshore mooring and/or docking facilities for vessels used for any marine-related commercial, industrial, or fisheries use.

**Commercial kennel** means a commercial operation that: (1) provides food and shelter and care of eight or more animals for purposes not primarily related to medical care; or (2) has at any one time eight or more animals for the purpose of commercial breeding.

**Commercial marina use structure** means a structure which is used by a business entity to serve the general public by providing marine-related services.

**Commercial or home occupation vessel** means the vessel is used for commercial or home occupation use when its principal purpose or use is in the pursuit of one's business or trade for the purpose of earning a livelihood. The burden of proof in establishing the commercial or home occupation use of a vessel lies with the vessel owner.

**Commercial use** means the use of lands, buildings, or structures, other than a "home occupation," defined below, the intent and result of which activity is the production of income from the buying and selling of goods and/or services, exclusive of rental of residential buildings and/or dwelling units.

**Community** means the Town of Kittery and its people.

**Comprehensive plan** means any part or element of the plan or policy for the development of the Town as defined in Title 30-A, M.R.S. §4301, as issued in the Kittery comprehensive plan as approved by the Town Council, or subsequent revisions or additions thereto.

**Conference center** means a facility used for conferences, seminars, and meetings, including accessory accommodations for food preparation and eating, recreation, entertainment, resource facilities, and meeting rooms.

**Construction drawings** means drawings showing the location, profile, grades, size and type of drains, sewers, water mains, underground fire alarm ducts, pavements, of streets, miscellaneous structures, etc.

**Construction services** means the performance of work and/or the furnishing of supplies to members of the building trades such as, but not limited to, plumbing, painting, building, well drilling, carpentry, masonry, or electrical installation, which requires, or customarily includes, the storage of materials and/or the location of commercial vehicles at the site.

**Contiguous lots** means lots which adjoin at any line or point, or are separated at any point by a body of water less than fifteen (15) feet wide.

**Convalescent care facility** means a facility that is licensed by the state of Maine to provide nursing care to persons during periods of recovery or rehabilitation. The facility provides nursing care and related rehabilitation services. The facility does not provide hospital services except as incidental to the delivery of nursing care. A convalescent care facility does not include any facility that is defined as an eldercare facility.

**Convenience store, neighborhood grocery facilities** means a retail store containing less than two thousand (2,000) square feet of gross floor area that is designed and stocked to sell primarily food, beverages, and other household supplies to customers who purchase only a relatively few items (in contrast to a grocery store). It is designed to attract and depends upon a large volume of stop-and-go traffic. Supplementing these uses with accessory gasoline sales requires additional parking and traffic considerations.

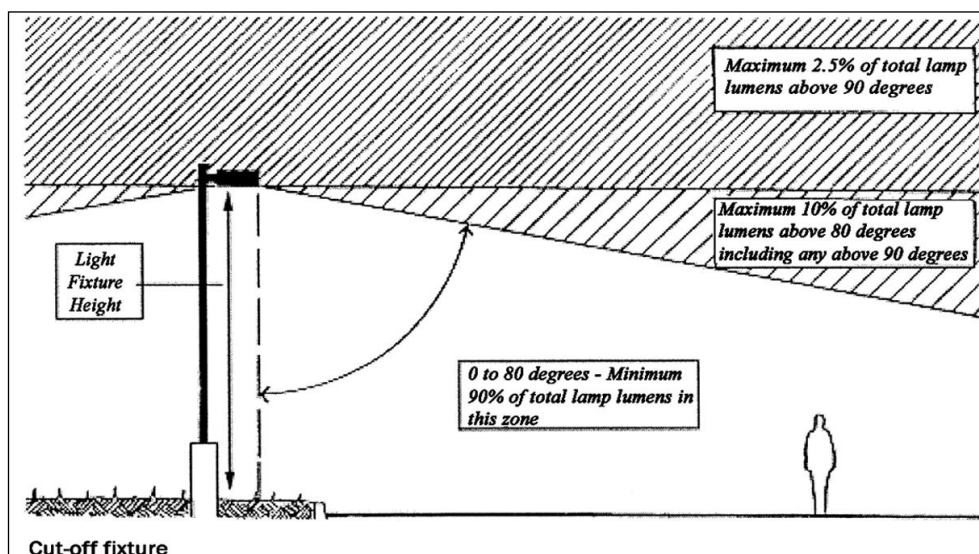
**Corner Lot.** In zones where yards are required:

1. Such corner lots, located at the intersection of two streets, are deemed to have a side rather than a front yard between the principal building and the side street. Such side yard may not be less than the front yard requirements of uses located on the side street.
2. Such corner lots, located at the intersection of two streets, are deemed to have a side rather than a rear yard between the principal building and the abutting property on the side street. Such side yard may not be less than the side yard requirements of uses located on the side street.
3. All such side yards described above must conform to the specific regulations related to yard space and related building height contained in the district provisions of this Code.

**Coverage (lot, building)** means the aggregate or the maximum horizontal area of all buildings on the lot including accessory buildings but excluding cornices, eaves, or gutters projecting not more than twenty-four (24) inches. Pet shelters, playground equipment, tree houses, and structures that are not also “buildings” are not used in calculating building coverage. Additionally, this is not to be construed to mean the aggregate of floors in a multi-level building.

**Coverage (lot, structure)** means the aggregate or the maximum horizontal area of all structures and buildings on the lot including accessory structures and buildings but excluding cornices, eaves, or gutters projecting not more than twenty-four (24) inches. Pet shelters, playground equipment, and treehouses are not used in calculating structure coverage.

**Cut-off fixture** means a lighting fixture or luminaire that controls glare by directing light well below the horizontal. A cut-off fixture limits the direction of light so that a maximum of two and one-half percent of the total lamp lumens shine above ninety (90) degrees or a line parallel to the surface of the ground and a maximum of ten percent (10%) of the lamp lumens shine above eighty (80) degrees, including any above ninety (90) degrees, as shown in the following sketch.



**Day** means a calendar day unless otherwise indicated.

**Day care facility** means a house or other place conducted or maintained by anyone who provides on a regular basis and for consideration, care and protection for three or more unrelated children under sixteen (16) years of age, who are unattended by their parent(s) or guardian(s), for any part of a day. There must be a minimum of fifty (50) square feet of fenced outside play area for each child enrolled. Any facility, the chief purpose of which is to provide education, is not considered a day care facility.

**Deck** means an unenclosed, unroofed exterior platform structure, with or without railings, which is elevated above ground, and is typically of wood construction, whether attached to a building or freestanding. A deck is not a water-dependent structure.

**Designated historic building** means a building listed on or located within an historic district listed on the National Register of Historic Places or a list of historic buildings or local historic districts published by the Maine Historic Preservation Office, or contained in the Town's adopted comprehensive plan.

**Developer** means any person, firm, corporation, or other legal entity that makes application for any type of development within the Town.

**Development** means a change in land use involving alteration of the land, water or vegetation, or the addition or alteration of structures or other construction not naturally occurring.

**Development Plan.** See Master Site Development Plan.

**Dimensional requirements** means numerical standards relating to spatial relationships including, but not limited to setbacks, lot width and area, shore frontage, percent of lot coverage, and height.

**Disability** means any disability, infirmity, malformation, disfigurement, congenital defect or mental condition caused by bodily injury, accident, disease, birth defect, environmental conditions or illness; and also includes the physical or mental condition of a person which constitutes a substantial handicap as determined by a physician or in the case of mental handicap, by a psychiatrist or psychologist, as well as any other health or sensory impairment which requires special education, vocational rehabilitation or related services.

**Disturbed Area** is land altered by the clearing of vegetation, grading, excavation and redevelopment. The cutting of trees without grubbing, stump removal, and the disturbance or exposure of soil, is not considered to be disturbed area. Work performed in order to continue the original line and grade, hydraulic capacity, and the original purpose of the land or the improvements thereon is not considered to be disturbed area.

**Dock** means the slip or waterway extending between two piers or projecting wharves or cut into the land for the reception of vessels.

**Drainage Ditch** means a man-made, regularly maintained channel, trench, or swale for conducting water that has a direction of flow to remove surface water or groundwater from land by means of gravity. For the purposes of this Code, any new activity that reroutes a stream bed or dredges a wetland is not considered to be a "drainage ditch." Where a drainage ditch widens out into a larger wetland, a route no more than twelve (12) feet in width can be considered to be the drainage ditch. The remainder is considered wetlands unless it is demonstrated that the originally developed drainage ditch was designed to be greater than twelve (12) feet in width.

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**Dredge** means to move or remove, by digging, scraping, scooping, or suctioning any earth, sand, silt, mud, gravel, rock, or other material from the bottom of a water body or wetland surface.

**Driveway** means a vehicular access way less than five hundred (500) feet in length serving two lots or less.

**Dwelling** means a building designed or used as the living quarters for one or more families. The term does not include motel, rooming house, hotel, inn, club, trailer, or structures solely used for transient or overnight occupancy.

**Dwelling unit** means a room or group of rooms forming a habitable unit for one family with facilities used or intended to be used for living, sleeping, cooking, eating, and sanitary facilities. It comprises at least six hundred fifty (650) square feet of habitable floor space, except for elderly housing, an accessory dwelling unit, or a temporary, intra-family dwelling unit. The term does not include a trailer.

**Easement** means the authorization of a property owner for the use by another, and for a specified purpose, of any designated part of the owner's property.

**Eave** means the projecting lower edges of a roof overhanging the wall of the building.

**Eldercare facility** means a residential facility occupied principally by residents who are at least fifty-five (55) years of age (or in the case of a couple, at least one of whom is at least fifty-five (55) years of age) that provides a program of services to its residents. Occupants of the facility may also include handicapped individuals of any age. The facility includes shared community space and shared dining and kitchen facilities that are used on a daily basis by at least some of the residents of the facility. The housing accommodations in the facility can be either dwelling units or residential care units or a combination of the two. The facility may include facilities for allied health services, social services, and personal services such as physical and occupational therapy, a beauty shop, recreational programs, elderly day care, and similar programs. The use of these facilities must be accessory to the primary residential use of the facility but may be open to nonresidents of the facility. The service component can vary to meet the needs of the residents but must include at least one meal a day for some of the residents of the facility. The definition of eldercare facility includes a variety of accommodations that provide both housing and supportive services for the residents including facilities that are typically referred to as independent living units, congregate care units, assisted living units, dementia or Alzheimer's units, or hospice units, but does not include housing units that do not provide supportive services or a nursing care or convalescent care facility that provides nursing services.

**Elderly day care facility** means a facility that provides short-term care, supervision, and recreation and social activities for elderly and handicapped individuals in which the participants do not stay overnight.

**Elderly housing** means a residential use occupied principally by residents who are at least fifty-five (55) years of age (or in the case of a couple, at least one of whom is at least fifty-five) years of age) in which the accommodations are all dwelling units with private bathrooms and cooking facilities. Occupants of this residential use may also include handicapped individuals of any age. This housing does not provide a regular program of services to all of its residents although individual residents may arrange for the provision of services within the facility. Elderly housing includes very limited shared community space and shared dining and kitchen facilities but may include limited facilities for allied health services, social services, and personal services such as physical and occupational therapy, a beauty shop, recreational programs, elderly day care, and similar programs. The use of these facilities must be accessory to the primary residential use of the facility but may be open to nonresidents of the facility. Elderly housing does not include eldercare facilities

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that are typically referred to as independent living units, congregate care units, assisted living units, dementia or Alzheimer's units, or hospice units, or a nursing care or convalescent care facility that provides nursing services.

**Elevated building** means a nonbasement building:

1. Built, in the case of a building in Zones A1—30, AE, A, A99, AO or AH, to have the top of the elevated floor, elevated above the ground level by means of pilings, columns, post, piers or “stilts”; and
2. Adequately anchored so as not to impair the structural integrity of the building during a flood of up to one foot above the magnitude of the base flood.

In the case of Zones A1—30, AE, A, A99, AO or AH, elevated building also includes a building elevated by means of fill or solid foundation perimeter walls less than three feet in height with openings sufficient to facilitate the unimpeded movement of flood waters.

(Ordained 9/26/11; effective 10/27/11)

**Elevation certificate** means an official form (FEMA Form 81-31, 05/90, as amended) that:

1. Is used to verify compliance with the floodplain management regulations of the National Flood Insurance Program; and
2. Is required for purchasing flood insurance.

(Ordained 9/26/11; effective 10/27/11)

**Emergency operations** means operations conducted by or on behalf of the municipality for the public health, safety, or general welfare, such as protection of resources from immediate destruction or loss, law enforcement, and operations to rescue human beings, property, and livestock from the threat of destruction or injury.

**Essential services** means the construction, alteration, or maintenance of gas, electrical, or communication facilities; steam, fuel, electric power or water transmission or distribution lines, towers and related equipment; telephone cables or lines, poles and related equipment; gas, oil, water, slurry, or other similar pipelines; municipal sewage lines, collection or supply systems; and associated storage tanks. Such systems may include towers, poles, wires, mains, drains, pipes, conduits, cables, fire alarms, all police call boxes, traffic signals, hydrants, and similar accessories, but do not include service drops or buildings which are necessary for the furnishing of such services.

**Expansion of a structure** means an increase in the floor area or volume of a structure, including all extensions such as, but not limited to, piers, or attached decks, garages, porches, and greenhouses.

**Expansion of use** means the addition of weeks or months to a use's operating season; additional hours of operation; or the use of more floor area or ground area devoted to a particular use.

**FAA** means the Federal Aviation Administration.

**Family** means one or more persons occupying premises and living as a single housekeeping unit.

**Fast-food outlets, drive-in restaurant, or snack bar** means any establishment whose principal business is the sale of foods, frozen desserts, or beverages in ready-to-consume individual servings, for consumption either within the building or for carry-out, and the establishment includes a drive-up or drive-through service facility, a take-out window, or offers curbside service.

**FCC** means the Federal Communications Commission.



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**Fill** means materials such as select soils, rock, sand and gravel added to a land area or wetland area.

**Filling** means the act of adding and/or placing 'fill' into or upon a land area or wetland area.

**Final subdivision plan** means the final drawings on which an applicant's plan of a subdivision is presented to the Planning Board for approval and which, if approved, must be filed for the record with the municipal clerk and York County Registry of Deeds.

**Finger float** means a float extending from the main float of a pier, ramp and float system that creates slips and/or increases the pier or float edge available for mooring boats.

**Flag** means any fabric containing distinctive colors, patterns, or symbols, used as a symbol of a government or recognized political subdivision.

**Float** means a platform that floats and is anchored, moored or secured at or near the shore, used for landing or other purposes.

**Flood or flooding** means:

1. A general and temporary condition of partial or complete inundation of normally dry land areas from:
  - a. The overflow of inland or tidal waters,
  - b. The unusual and rapid accumulation or runoff of surface waters from any source;
2. The collapse or subsidence of land along the shore of a lake or other body of water as a result of erosion or undermining caused by waves or currents or water exceeding anticipated cyclical levels or suddenly caused by an unusually high water level in a natural body of water, accompanied by a severe storm, or by an unanticipated force of nature, such as flash flood or an abnormal tidal surge, or by some similarly unusual and unforeseeable event which results in flooding as defined in subsection (1)(a) of this definition.

(Ordained 9/26/11; effective 10/27/11)

**Flood elevation study** means an examination, evaluation and determination of flood hazards and, if appropriate, corresponding water surface elevations.

(Ordained 9/26/11; effective 10/27/11)

**Flood hazard zone** means that portion of land which has one percent chance of flooding in any given year, as designated on Flood Insurance Rate Maps issued by the Federal Insurance Administration, if available, or on Flood Hazard Boundary Maps issued by the Federal Insurance Administration.

**Flood Insurance Rate Map (FIRM)** means an official map of a community, on which the Administrator of the Federal Insurance Administration has delineated both the special hazard areas and the risk premium zones applicable to the community.

Flood Insurance Study. See "Flood elevation study."

(Ordained 9/26/11; effective 10/27/11)

**Flood, One Hundred (100) Year** means the highest level of flood that, on the average, is likely to occur once every one hundred (100) years (that has a one-percent chance of occurring in any given year).

**Floodplain or Flood-prone area** means any land area susceptible to being inundated by water from any source (see flood).

(Ordained 9/26/11; effective 10/27/11)

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(With amendments Ordained 9/26/11; 1/23/12; 5/30/12; 9/24/12; 3/25/13; 6/10/13; 1/27/14)

**Floodplain management** means the operation of an overall program of corrective and preventive measures for reducing flood damage, including but not limited to emergency preparedness plans, flood control works, and floodplain management regulations.

(Ordained 9/26/11; effective 10/27/11)

**Floodplain management regulations** means zoning ordinances, subdivision regulations, building codes, health regulations, special purpose ordinances (such as a floodplain ordinance, grading ordinance, and erosion control ordinance) and other applications of police power. The term describes such state or local regulations, in any combination thereof, which provide standards for the purpose of flood damage prevention and reduction.

(Ordained 9/26/11; effective 10/27/11)

**Floodproofing** means any combination of structural and nonstructural additions, changes or adjustments to structures which reduce or eliminate flood damage to real estate or improved real property, water and sanitary facilities, structures and contents.

(Ordained 9/26/11; effective 10/27/11)

**Floodway.** See “Regulatory floodway.”

(Ordained 9/26/11; effective 10/27/11)

**Floodway encroachment lines** means the lines marking the limits of floodways on federal, state and local floodplain maps.

(Ordained 9/26/11; effective 10/27/11)

**Floor area** means the sum of the horizontal areas of the floor(s) of a structure enclosed by exterior walls, plus the horizontal area of any unenclosed portions of a structure such as porches and decks.

**Food store** means a retail establishment primarily engaged in the selling of a limited line of food items for home consumption such as, but not limited to, meat and seafood markets, fruit and vegetable markets, and retail bakeries.

**Forest management activities** means timber cruising and other forest resource evaluation activities, pesticide or fertilizer application, management planning activities, timber stand improvement, pruning, regeneration of forest stands, and other similar or associated activities, exclusive of timber harvesting and the construction, creation, or maintenance of roads.

**Forested wetland** means a fresh water wetland dominated by woody vegetation that is twenty (20) feet tall or taller.

**Foundation** means the supporting substructure of a building or other structure including, but not limited to, basements, slabs, sills, posts, or frostwalls.

**Freeboard** means a factor of safety usually expressed in feet above a flood level for purposes of floodplain management. Freeboard tends to compensate for the many unknown factors, such as wave action, bridge openings, and the hydrological effect of urbanization of the watershed, that could contribute to flood heights greater than the height calculated for a selected size flood and floodway conditions.

(Ordained 9/26/11; effective 10/27/11)

**Freshwater wetland** means non-coastal types of wetlands, including, but not limited to, freshwater swamps, marshes, bogs, and similar areas.

**Functionally Water-Dependent Uses** means those uses that require, for their primary purpose, location on submerged lands or that require direct access to, or location in, coastal and inland waters and which cannot be located away from these waters. The uses include, but are not limited to, commercial and recreational fishing and boating facilities, finfish and shellfish processing, fish storage and retail and wholesale fish marketing facilities, waterfront dock and port facilities, excluding recreational boat storage buildings, shipyards and boat building facilities, marinas, navigation aids, basins and channels, industrial uses dependent upon water-borne transportation or requiring large volumes of cooling or processing water and which cannot reasonably be located or operated at an inland site, and uses which primarily provide general public access to marine or tidal waters.

**Gambling** means that process in which one stakes or risks something of value upon the outcome of a contest of chance or a future contingent event not under his/her control or influence, upon an agreement or understanding that he, she, or someone else will receive something of value in the event of a certain outcome. Gambling does not include bona fide business transactions valid under the law of contracts, including, but not limited to, contracts for the purchase or sale at a future date of securities or commodities, and agreements to compensate for loss caused by the happening of chance, including, but not limited to, contracts of indemnity or guaranty and life, health, or accident insurance.

**Gambling casino** means a building, structure, or other facility used to allow, conduct, hold, maintain, or operate a game of chance, game of skill, electronic video machine, roulette, high-stakes beano or bingo, slot machines, or any other type of gambling activity. A gambling casino does not include a building structure or other facility when used incidentally by any bona fide nonprofit charitable, educational, political, civic, recreational, paternal, patriotic, or religious organizations, or a volunteer fire department or other public safety nonprofit organization when used for the conduct of any beano, bingo, raffles, games of chance, or other activities specifically permitted by Maine State Statute provided that such nonprofit organizations do not exist primarily to operate such activities and that all requirements of state statute including all requirements for licensing by the Chief of the Maine State Police are strictly met.

**Gambling device** means any device, machine, paraphernalia, or equipment that is used or usable in the playing phases of any gambling activity, whether that activity consists of gambling between persons or gambling by a person involving the playing of a machine. However, lottery tickets and other items used in the playing phases of lottery schemes are not gambling devices within this definition.

**Game of chance** means any game, contest, scheme, or device in which: (1) a person stakes or risks something of value for the opportunity to win something of value; (2) the rules of operation or play require an event, the result of which is determined by chance, outside the control of the contestant or participant; and (3) chance enters as an element that influences the outcome in a manner that cannot be eliminated through the application of skill.

As used in this definition, “an event the result of which is determined by chance” includes, but is not limited to, a shuffle of a deck or decks of cards, a roll of a die or dice, or a random drawing or generation of an object or objects that may include, but are not limited to, a card or cards, a die or dice, a number or numbers, or simulations of any of these. A shuffle of a deck or decks of cards, a roll of a die or dice, a random drawing or generation of an object or objects, or some other event the result of which is determined by chance that is

employed to determine impartially the initial order of play in a game, contest, scheme, or device, does not alone make a game, contest, scheme, or device a game of chance.

**Game of skill** means any game, contest, scheme, or device in which a person stakes or risks something of value for the opportunity to win something of value and that is not a game of chance.

**Gasoline sales** means the retail sales of fuel for motor vehicles including, but not limited to, gasoline, diesel fuel, bio-diesel, kerosene, ethanol, propane, and hydrogen, and related goods and services. The gasoline sales can be the principal use or accessory to another principal use such as a convenience store or other retail or service use.

**Gasoline service station** means an establishment for the retail sales of fuel for motor vehicles including, but not limited to, gasoline, diesel fuel, bio-diesel, kerosene, ethanol, propane, and hydrogen, and related goods and services and may provide service and minor repairs for motor vehicles.

**Glare** means excessive brightness that makes it difficult to see or that causes discomfort. Glare includes direct glare, disability glare, and discomfort glare as follows:

1. “Direct glare” means glare resulting from insufficiently shielded light sources or areas of excessive luminance within the field of view.
2. “Disability glare” means the effect of stray light in the eye whereby visibility and visual performance are reduced.
3. “Discomfort glare” means glare producing discomfort. It does not necessarily interfere with visual performance or visibility.

**Grade plane** means a reference plane representing the average of finished ground level adjoining the building at all exterior walls. Where the finished ground level slopes away from the exterior walls, the reference plane is to be established by the lowest points within the area between the building and the lot line or, where the lot line is more than six feet (1,829 mm) from the building, between the building and a point six feet (1,829 mm) from the building.

**Grocery store** means a retail establishment primarily selling prepackaged food products and household items for home preparation and consumption.

**Gross floor area** means the sum of the horizontal areas of the floor(s) of a structure enclosed by exterior walls or a roof, plus the horizontal area of portions of the site used for customer seating, display of merchandise, or outdoor sales.

**Ground Cover** means small plants, fallen leaves, needles and twigs, and the partially decayed organic matter of the forest floor.

**Hazardous waste** means, as defined in 38 M.R.S. §1319-0, a waste substance or material in any physical state, designated as hazardous by the Board of Environmental Protection under 38 M.R.S. §1303-A.

**Height of a building** means the vertical measurement from the average grade between the highest and lowest elevation of the original ground level to the highest point of the roof beams in flat roofs; to the highest point on the deck of mansard roofs; to a level midway between the level of the eaves and highest point of pitched roofs or hip roofs; or to a level two-thirds of the distance from the level of the eaves to the highest

point of gambrel roofs. For this purpose, the level of the eaves is taken to mean the highest level where the plane of the roof intersects the plane of the outside wall on a side containing the eaves.

This is not intended to include weather-vanes or residential antennae that protrude from a roof, but does include all towers, excepting those utilized for amateur radio communications, and other structures. Building height restrictions do not apply to roadside utility poles approved by the Town Council of less than forty-five (45) feet in height above ground.

**Height of a structure** means the vertical distance between the mean original grade at the downhill side of the structure and the highest point of the structure, excluding chimneys, steeples, antennas, and similar appurtenances which have no floor area.

**Height of wireless communication services facilities** means the distance measured from ground level to the highest point on the tower or other structure, even if such highest point is an antenna.

**High intensity soil survey** means a map prepared by a certified soil scientist using the guidance defined and prepared by the Maine Association of Professional Soil Scientists. The soils must be identified in accordance with the National Cooperative Soil Survey. The map must show the location of all test pits used to identify the soils, and be accompanied by a log of each sample point identifying the textural classification and the depth to seasonal high-water table or bedrock at that point. Evaluations of single soil test pits for subsurface waste disposal do not meet the requirements for high intensity soil surveys and are not suitable replacement.

**Historic structure** means any structure that is:

1. Listed individually in the National Register of Historic Places (a listing maintained by the Department of Interior) or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register;
2. Certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary of the Interior to qualify as a registered historic district;
3. Individually listed on a state inventory of historic places in states with historic preservation programs which have been approved by the Secretary of the Interior; or
4. Individually listed on a local inventory of historic places in communities with historic preservation programs that have been certified either:
  - a. By an approved state program as determined by the Secretary of the Interior, or
  - b. Directly by the Secretary of the Interior in states without approved programs.

(Ordained 9/26/11; effective 10/27/11)

**Home occupation** means any activity carried out for gain by a resident of the premises with the permission of the property owner and conducted as an accessory use to the principal residential use.

**Home Occupation, Major** means a type of home occupation that fails to meet all of the standards for a “minor home occupation” established in Section 16.8.22.2, but is found by the Board of Appeals to satisfy the standards established in Section 16.8.22.3 to ensure that a business results in no more than a minor intrusion in the quality of life of residents in the surrounding neighborhood.

**Home Occupation, Minor** means the least intensive type of home occupation that meets the standards established in Section 16.8.22.2 to ensure compatibility with the surrounding neighborhood.

**Hospital** means an institution specializing in providing in-patient and out-patient treatment and emergency services of a medical nature to human patients. A hospital may include the offices or facilities of independent service providers and/or a freestanding out-patient clinic or diagnostic facility that operates as part of, or an adjunct to, the main facility.

**Hotel** means a building in which lodging, or boarding and lodging capabilities are provided for more than twenty(20) persons, and offered to the public for compensation, and in which ingress and egress to and from rooms are made primarily through an inside lobby or office supervised by a person in charge at all hours. As such, it is open to the public in contradistinction to a rooming house or a motel, which are separately defined in this Section.

**Hydric soil** means a soil that in its undrained condition is saturated, flooded, or ponded long enough during the growing season to develop anaerobic conditions that favor the growth and regeneration of wetland (hydrophytic) vegetation. Soils found in Kittery which may be considered hydric soils include but are not limited to: Biddeford, Brayton, Chocorua, Rumney, Scantic, Sebago, Vassalboro, Naumberg, Raynham, and Waskish. All hydric soils listed in the Natural Resources Conservation Service list entitled “National Hydric Soils List by State” are included for consideration in this title. (<http://soils.usda.gov/use/hydric/lists/state.html>)

**Hydrophytic vegetation** means plant life growing in water or on a substrate that is at least periodically deficient in oxygen as a result of excessive water content. Hydrophytic vegetation includes plants classified as Obligate Wetland, Facultative Wetland, or Facultative in the U.S. Fish and Wildlife Service publication, National List of Plant Species That Occur in Wetlands: 1988—Maine, as amended or superseded. This publication is available at the municipal offices for inspection.

**Improvement plans** means maps, plans, profiles, studies, cross sections and other required details for the construction of all improvements.

**Individual private campsite** means an area of land which is not associated with a campground, but which is developed for repeated camping by only one group not to exceed ten (10) individuals and no more than two recreational vehicles, and which involves site improvements which may include but not be limited to gravel pads, parking areas, fireplaces, or tent platforms.

**Industrial** means the assembling, fabrication, finishing, manufacturing, packaging or processing of goods, or the extraction of minerals.

**Industry, Heavy** means a facility and/or site used in the basic processing and manufacturing of materials or products predominantly from extracted or raw materials, or a use engaged in storage of, or manufacturing processes using flammable or explosive materials, or storage or manufacturing processes that potentially involve hazardous or commonly recognized offensive conditions.

**Industry, Light** means a facility used in the manufacture, predominantly from previously prepared materials, of finished products or parts, including processing, fabrication, assembly, treatment, blending, packaging, inside an enclosed structure. Basic industrial processing such as paper manufacturing, petroleum processing, manufacture of explosives, production of chemicals or fertilizer are not light industrial uses.

**Inn** means a commercial place of lodging which contains a dwelling unit occupied by an owner or resident manager, which has twelve (12) or fewer guest rooms, and may include a restaurant which also serves non-guests. Rentals to the same party for more than twelve (12) weeks in a calendar year are prohibited.

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(With amendments Ordained 9/26/11; 1/23/12; 5/30/12; 9/24/12; 3/25/13; 6/10/13; 1/27/14)

**Intermittent stream** means a channel of a stream, river, or brook that is without flowing surface water for at least one month of a year.

**Invasive non-native plant** means grasses, forbs, shrubs, or trees not native to the State of Maine, and which proliferate in and dominate vegetation to the exclusion or elimination of native plants.

**July 13, 1977** means that date upon which a complete revision of the first zoning ordinances was adopted by the Town and upon which certain existing nonconforming conditions are considered to be protected (grandfathered).

**Junkyard** means a lot or part thereof, exposed to the elements, which is used for the sale or for the storage, keeping or abandonment of junk or scrap materials, or the storage, dismantling, demolition, abandonment or sale of construction equipment or machinery, or parts thereof or of unregistered automobiles or other vehicles not in condition for use on the public highway.

**Landing** means a place for loading or discharging persons or goods, as from a vessel.

**Landscape planter strip** means a vegetated area (naturally vegetated and/or landscaped) located adjacent and parallel to a road or street and designed to visually and functionally separate the roadway from the abutting property upon which it is located.

**Large, healthy tree** means a tree with a diameter at breast height (dbh) of at least twelve (12) inches and which does not exhibit any indicators of stress, damage, disease, or decay that will limit its expected additional life to less than twenty (20) years.

**Legally non-conforming** means it was lawfully created, but became non-conforming due to a change in the Town Code.

**Legislative body** means Town Council.

**Light fixture height** means the vertical distance between the surface that will be illuminated by the fixture and the bottom of the light source (see cut-off fixture diagram).

**Locally established datum** means, for purposes of this article, an elevation established for a specific site to which all other elevations at the site are referenced. This elevation is generally not referenced to the National Geodetic Vertical Datum (NGVD) or any other established datum and is used in areas where mean sea level is too far from a specific site to be practically used.

(Ordained 9/26/11; effective 10/27/11)

**Lot** means a parcel of land, legally created and recorded having frontage upon an approved public or private street; or, a tract of land legally created and recorded prior to July 13, 1977.

**Lot area** means the area of land enclosed within the boundary lines of a lot, minus: (1) land below the normal high-water line of a water body or upland edge of a coastal wetland; (2) areas beneath Planning Board-approved right-of-way; and (3) land within public street rights-of-way.

**Lot width** means the horizontal distance between the side lot lines, measured at the setback lines.

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(With amendments Ordained 9/26/11; 1/23/12; 5/30/12; 9/24/12; 3/25/13; 6/10/13; 1/27/14)

**Low intensity recreation** means outdoor recreational activities which have a low impact on the environment and neighborhood and require no motorized vehicles, significant earthmoving, or substantial structures such as: hiking, fishing, canoeing, hunting, cross-country skiing, and wildlife observation and study. Benches and boardwalks, steps, railings, and other structures necessary to provide safe accessibility for physically handicapped persons are allowed.

**Lowest floor** means the lowest floor of the lowest enclosed area (including basement). An unfinished or flood-resistant enclosure, usable solely for parking of vehicles, building access or storage in an area other than a basement area is not considered a building's lowest floor, provided that such enclosure is not built so as to render the structure in violation of the applicable nonelevation design requirements described in Section 16.9.8.8.

(Ordained 9/26/11; effective 10/27/11)

**Lumen** means a standard measure of light energy generated by a light source, normally reported by the manufacturer of the lamp or bulb.

**Manufactured housing** means a structural unit or units designed for occupancy, and constructed in a manufacturing facility and transported by the use of its own chassis, or placed on an independent chassis, to a building site. The term includes any type of building which is constructed at a manufacturing facility and then transported to a building site where it is utilized for housing, and may be purchased or sold by a dealer in the interim. For purposes of this Code, two types of manufactured housing are included: mobile homes and modular homes. For floodplain management purposes the term "manufactured housing" also includes park trailers, travel trailers, and other similar vehicles placed on a site for more than one hundred eighty (180) consecutive days.

(Ordained 9/26/11; effective 10/27/11)

**Marina** means a principal marine use as listed in Sections 16.3.2.17.B and 16.8.15.1 of this Code.

**Market value** means the estimated price a property will bring in the open market and under prevailing market conditions in a sale between a willing seller and a willing buyer, both conversant with the property and with prevailing general price levels.

**Mass transit station** means a place where people transfer between modes of transportation or any premises for the transient housing or parking of buses, trains, or ride-sharing vehicles and the loading and unloading of passengers.

**Master Site Development Plan** means a conceptual, integrated design and infrastructure plan for the development of a master planned property in which: (1) the development standards are applied to the land as defined by its perimeter, rather than by the individual lots, tracts and parcels into which the land may be divided, and (2) the standards are applied to the zone rather than to individual lots, tracts and parcels within the zone.

**Mean sea level** means, for purposes of the National Flood Insurance Program, the National Geodetic Vertical Datum (NGVD) of 1929, or other datum, to which base flood elevations shown on a community's Flood Insurance Rate Map are referenced.

(Ordained 9/26/11; effective 10/27/11)



**Mechanical service** means establishments primarily engaged in mechanical or electronic repair or maintenance of motorized or mechanical equipment such as, but not limited to, welding repair, small engine repair, tool sharpening, and refrigeration and air conditioning repair, but excluding repair garages.

**Mineral/earth material exploration** means hand sampling, test boring, or other methods of determining the nature or extent of mineral/earth resources which create minimal disturbance to the land and which include reasonable measures to restore the land to its original condition.

**Mineral extraction** means any operation within any twelve (12) month period which removes more than one hundred (100) cubic yards of soil, topsoil, loam, sand, gravel, clay, rock, peat, or other like material from its natural location and to transport the product removed, away from the extraction site.

**Mini storage** means a commercial facility for the storage of consumer or business property on a rental basis in which the tenant receives the exclusive use of a storage unit or locker and can access the unit to drop-off or retrieve property at designated times.

**Mixed-use building** means a building occupied by two or more types or categories of principal uses (for example, residential and office, or office and retail) in which any category of uses occupies at least ten (10) percent of the gross floor area of the building.

**Mobile home park** means a parcel of land under unified ownership approved by the Planning Board for the placement of three or more manufactured homes.

**Mobile home park lot** means the area of land on which an individual mobile home may be situated within a mobile home park and which is reserved for use by the occupants of that home.

**Mobile homes** means those units constructed after June 15, 1976, which the manufacturer certifies are constructed in compliance with the United States Department of Housing and Urban Development (HUD) standards, meaning structures, transportable in one or more sections, which, in the traveling mode, are fourteen (14) body feet or more in width and are seven hundred fifty (750) or more square feet, and which are built on a permanent chassis and designed to be used as dwellings, with or without permanent foundation, when connected to the required utilities, including the plumbing, heating, air conditioning or electrical systems contained therein; except that the terms include any structure which meets all the requirements of this paragraph, except the size requirements, and with respect to which the manufacturer voluntarily files a certification required by the HUD Secretary and complies with the standards established under the National Manufactured Housing Construction and Safety Standards Act of 1974, United States Code, Title 42, Section 5401, et seq.

**Modular home** means a unit commonly called a “modular home,” which the manufacturer certifies is constructed in compliance with the state of Maine’s Manufactured Housing Act and Regulations, meaning structures, transportable in one or more sections, which are not constructed on a permanent chassis and are designed to be used as dwellings on foundations when connected to required utilities, including the plumbing, heating, air conditioning, or electrical systems contained therein.

**Motel** means a building or group of detached or connected buildings designed, intended, or used primarily to provide sleeping accommodations without cooking facilities for travelers for compensation and having a parking space adjacent to a sleeping room. An automobile court or a tourist court with more than one unit or a motor lodge is deemed to be a motel.

**Multiunit residential** means a residential structure containing three or more residential dwelling units.

**Municipal Separate Storm Sewer System, or MS4**, means conveyances for storm water, including, but not limited to, roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, human-made channels or storm drains (other than publicly owned treatment works and combined sewers) owned or operated by any municipality, sewer or sewage district, fire district, State agency or Federal agency or other public entity that discharges directly to surface waters of the State.

**Municipality** means Town of Kittery, Maine.

**Navigable waters** means the “waters of the United States including territorial seas” as defined in the Federal Clean Water Act and 33 CFR Part 328, as amended.

**Net residential acreage** means the gross available acreage less the area required for streets or access and less the areas of any portions of the site which are unsuitable for development as outlined in Article VIII of Chapter 16.7.

**Net residential density** means the number of dwelling units per net residential acre.

**New construction** means structures for which the “start of construction” commenced on or after the effective date of floodplain management regulations adopted by a community and includes any subsequent improvements to such structures.

(Ordained 9/26/11; effective 10/27/11)

**New motor vehicle sales** means a commercial establishment whose primary business is the buying and selling or offering to negotiate a sale of new motor vehicles including related service activities and has a franchise from a distributor or manufacturer. An establishment is “engaged in the business of buying, selling, or offering to negotiate the sale of a vehicle” if that business buys motor vehicles for the purpose of resale, sells, or offers to negotiate the sale of more than five motor vehicles in any twelve (12) month period, or displays or permits the display of three or more motor vehicles for sale at any one time or within any thirty (30) day period upon the premises, unless that person has owned and registered each vehicle for at least six months.

**Nonconforming structure** means a structure that does not meet one or more of the following dimensional requirements: setbacks, yard, height, or lot coverage. It is allowed solely because it was lawful when created and, became legally non-conforming as a direct result of a change in the provisions of this Code.

**Nonconforming, legally.** (See Legally non-conforming).

**Nonconforming lot of record** means a single lot of record, which was created prior to July 13, 1977, or subsequently created by legislative or judicial decision, which does not meet the area and/or frontage requirements of the district in which it is located; or is the result of legally authorized development created between July 13, 1977 and April 26, 1990 and became nonconforming as a direct result of the implementation of this Code.

**Nonconforming use** means use of buildings, structures, premises, land or parts thereof which is not allowed in the district and/or zone in which it is situated, but which is allowed to remain solely because it was in lawful

existence when created or became legally non-conforming as a direct result of a change in the provisions of this Code.

**Normal high water line** means the line which is apparent from visible markings, changes in the character of soils due to prolonged action of the water or changes in vegetation, and which distinguishes between predominantly aquatic and predominantly terrestrial land.

**Nursery school** means a house or other place in which a person or combination of persons maintains or otherwise carries out for consideration during the day a regular program which provides care for three or more children in accordance with 22 M.R.S. §1675, provided that:

1. No session conducted for the children is longer than three and one-half hours in length;
2. No more than two sessions are conducted per day;
3. Each child in attendance at the nursery school attends only one session per day; and
4. No hot meal is served to the children.

**Nursing Care Facility, Long-Term.** “Long-term nursing care facility” means a facility that is licensed by the state of Maine to provide nursing care to persons who are unable to care for themselves. The facility provides long-term residential and nursing care to its residents. The facility does not provide hospital services except as incidental to the delivery of nursing care. A long-term nursing care facility does not include any facility that is defined as an eldercare facility.

**Official business directional sign (OBDS)** means any sign erected and maintained in accordance with the Maine Traveler Information Services Act, 23 M.R.S. §21, and regulations adopted pursuant to it, and which complies with the requirements of this Code.

**Official map** means the map adopted by the municipality showing the location of public property, ways used in common by more than two owners of abutting property, and approved subdivision or site plan, and any amendments thereto adopted by the municipality or additions thereto resulting from the approval of a subdivision or site plan by the Planning Board and the subsequent filing for record of such plan.  
(Ordained 9/26/11; effective 10/27/11)

**Official submittal date** means the date upon which the Town Planner receives a complete application and issues a receipt so indicating.

**One Hundred (100) Year Flood.** See “Base flood.”  
(Ordained 9/26/11; effective 10/27/11)

**Open space** means and includes all dedicated portions of a parcel that has vegetated surfaces or is in an undisturbed natural state. “Open space” does not include areas occupied by a building or a parking area except where required by the management plan in place to govern the open space and as approved by the Planning Board. Vegetated surfaces of outdoor commercial uses may be used to satisfy up to fifty percent (50%) of the required open space on any parcel except those parcels within a cluster residential or cluster mixed-use development. (Ordained 9/24/12; effective 10/25/12)

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(With amendments Ordained 9/26/11; 1/23/12; 5/30/12; 9/24/12; 3/25/13; 6/10/13; 1/27/14)

**Open Space, Common** means useable land within or related to a development, not individually owned, which is designed and intended for the common use or enjoyment of the residents of the development and may include such complementary structures, improvements and uses approved by the Planning Board. Such uses may include active or passive recreation or agriculture, where permitted. (Ordained 9/24/12; effective 10/25/12)

**Open Space, Reserved** means dedicated land that is permanently protected from further development and remains in a natural condition or is managed according to an approved management plan for natural resource functions, e.g. forestry, agriculture, habitat protection, passive recreation, or limited uses as approved by the Planning Board as part of cluster residential and cluster mixed-use developments. (Ordained 9/24/12; effective 10/25/12)

**Open Space, Public** means land accessible or dedicated for public use. (Ordained 9/24/12; effective 10/25/12)

**Outdoor service areas** means areas located outside of a building or structure that are used for the delivery, handling, storage, or processing of materials, goods, or wastes including areas used for the servicing, repairing, washing, or fueling of motor vehicles and equipment.

**Owner** means any person, corporation or other legal entity having record title ownership to the property or the expressly authorized agent or designee thereof.

**Parcel.** See “Tract or parcel of land.”

**Parapet** means the extension of the wall(s) of a building above the roof eave and/or roof line.

**Parking lot** means an area other than part of a road or residential yard space which is allocated for the parking of motor vehicles for compensation and is able to be used for such purposes.

**Parking space** means a design dependent area as indicated in Figure 2 for Chapter 16.8. Each parking space is to contain a rectangular area at least nineteen (19) feet long and nine feet wide. Lines demarcating parking spaces may be drawn at various angles in relation to curbs or aisles, so long as the parking spaces so created contain within them the rectangular area required by this Section. This is exclusive of drives or aisles giving access thereto, accessible from streets or aisles leading to streets and usable for the storage or parking of passenger vehicles. Parking spaces or access thereto must be constructed as to be usable year round.

**Patio** means an unenclosed, unroofed, exterior floor-like surface, usually composed of brick, stone, or concrete, situated no higher than eighteen (18) inches above ground level, accessory to a dwelling and serving as an area for outdoor living.

**Person** means any individual, firm, corporation, municipality, quasi-municipal corporation, two or more individuals having a joint or common interest, State agency or Federal agency or other legal entity.

**Personal services** means establishments primarily engaged in providing services generally involving the care of one's personal appearance or apparel including, but not limited to, barbers and beauty shops, laundries, photographic studios, shoe repair, garment altering, and diaper services.

**Pier** means a structure built out into the water generally with piles for use as a landing place.

**Post-Construction Stormwater Management Plan** means BMPs and Stormwater Management Facilities employed by a new development or redevelopment to meet the stormwater standards of the municipality's subdivision, site plan, or other zoning, planning or other land use ordinances.

**Practicable** means available and feasible, considering cost, existing technology, and logistics based on overall project purposes.

**Pre-existing accessory-use towers/antennas** means legally existing prior to December 21, 1997, Wireless Communication System Facility (WCSF), towers/antennas and alternative tower structures. Enlargements of WCSF, accessory use towers/antennas legally existing prior to December 21, 1997 must conform to the requirements of this Code.

**Preliminary subdivision plan** means the preliminary drawings indicating the proposed layout of the subdivision to be submitted to the Planning Board for its consideration.

**Principal building** means the primary building on a lot or a building that shelters or encloses the principal use on a lot.

**Principal structure** means the primary structure on a lot or a structure that supports, shelters, or encloses the principal use on the lot.

**Principal Use** means the primary or predominant use. An activity that is conducted in conjunction with the principal use and such activity that either: (1) constitutes only an incidental or insubstantial part of the total activity that takes place on a lot, or (2) is commonly associated with the principal use and integrally related to it, is regarded as "accessory to the principal use." An "accessory to the principal use" is regarded as "incidental or insubstantial" if it is both incidental and insubstantial in and of itself, and in relation to the principal use. Quantitative measures for consideration in this determination include the percentage and total amount of square footage attributed to the accessory to the principal use and sales or income derived from the accessory to the principal use.

**Private marina use structure** means a structure which is owned and/or used by a private group, club, association or other legal entity's organization, and is used by its members only, and has frontage on navigable water, and as its principal use provides offshore moorings and/or docking facilities for vessels for use by its members and/or guests. The private marina may also provide accessory boating services. These accessory boating services may be provided to the boating public, members or guests.

**Prudent avoidance** means in any case where above ground electrical utilities are approved, the plan is to be designed to avoid human residences as distant as possible, without prohibitive cost.

**Public facility** means any facility, including, but not limited to, buildings, property, recreation areas, and roads, which are owned, leased, or otherwise operated, or funded by a governmental body or public entity.

**Public recreation** means a not-for-profit recreational facility open to the general public at no charge or a subsidized charge.

**Public utility** means as defined in Title 35-A, M.R.S. §102, as amended.

**Qualified Post-Construction Stormwater Inspector** means a person who conducts post-construction Stormwater Management Facilities inspections for compensation and who has received the appropriate training for the same from the Maine Department of Environmental Protection.

**Recent floodplain soils** means the following soil series as described and identified by the National Cooperative Soil Survey: Alluvial, Cornish, Charles, Fryeburg, Hadley, Limerick, Lovewell, Medomak, Ondawa, Podunk, Rumney, Saco, Suncook, Sunday, and Winooski.

**Recreational facility** means a place designed and equipped for the conduct of sports, leisure time activities, and other customary and usual recreational activities, excluding boat launching facilities.

**Recreational vehicle** means a vehicle or an attachment to a vehicle designed to be towed, and designed for temporary sleeping or living quarters for one or more persons, and which may include a pickup camper, travel trailer, tent trailer, camp trailer, and motor home. In order to be considered as a vehicle and not as a structure, the unit must remain with its tires on the ground, and must be registered with the State Division of Motor Vehicles.

**Regulatory floodway:**

1. Means the channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than one foot; and
2. In riverine areas is considered to be the channel of a river or other watercourse and the adjacent land areas to a distance of one-half the width of the floodplain, as measured from the normal high water mark to the upland limit of the floodplain. (Ordained 9/26/11; effective 10/27/11)

**Repair garage** means an establishment providing for the repair or servicing of motor vehicles. A repair garage does not include activities that are defined as mechanical service or a junkyard.

**Repair service** means a business providing for the repair of personal or small business property such as radios and televisions, household or office electrical or electronic equipment, watches, clocks and jewelry, furniture and upholstery, sporting equipment, and similar items but not including items included under mechanical services or automotive services and repair.

**Replacement system** means a system intended to replace: (1) an existing system which is either malfunctioning or being upgraded with no significant change of design flow or use of the structure; or (2) any existing overboard wastewater discharge.

**Research and development** means a building or group of buildings in which are located facilities for technical or scientific research, investigation, testing, or experimentation, but not facilities for the manufacture or sale of products, except as incidental to the main purpose of the facility.

**Residential care unit** means a type of residential accommodation in an eldercare facility that has private sleeping and bathroom facilities but does not have permanent, complete cooking facilities within the unit. The occupant of a residential care unit typically eats all or most of meals in a shared dining room. Residential care units may have a portable or removable kitchen or partial kitchen facilities such as a refrigerator and microwave oven. A residential care unit may be an apartment with a separate bedroom, a suite, or a room. A residential care unit is distinct from a dwelling unit that is defined separately.

**Residential development use pier, ramp and float system** means a pier and/or ramp and float system which is used in common by lot owners or residents of a subdivision or residential planned development. The purpose is to provide waterfront access to the owners of lots in a residential development that has the potential for more than one waterfront lot. The object is to minimize the number of piers, ramps and floats resulting from new development.

**Residential home occupation use pier, ramp and float system** means a pier and/or ramp and float system which is used for the residential home occupation workers in an approved functionally water-dependent home occupation (minor or major), in addition to its customary residential accessory use.

**Residential joint/shared-use pier, ramp and float system** means a pier and/or ramp and float system which is used by the owners of not more than four residential shorefront lots, at least one boundary of whose building lot lies within one thousand (1,000) feet of the lot on which the joint/shared-use pier is constructed.

**Residential single-use pier, ramp and float system** means a pier and/or ramp and float system which is used by owner(s) of a single residential shorefront lot.

**Residual basal area** means the sum of the basal area of trees remaining on a harvested site.

**Residual stand** means a stand of trees remaining in the forest following timber harvesting.

**Restaurant** means an establishment where food or food and drink are prepared and sold for consumption on the premises by the public and includes cafes, coffee shops, and similar establishments that serve food.

**Resubdivision** means the division of an existing subdivision or any change of lot size therein or the relocation of any street or lot in a subdivision, or any changes thereto.

**Retail use** means any business engaged primarily in the sale of goods for personal or household consumption and/or use, and not for resale. The term “retail use” does not include specific types of retail uses that are individually listed in Chapter 16.3.

**Right-of-Way, Private** means a platted and dedicated access route normally to back lot(s)/and as approved by the Planning Board and recorded in the York County Registry of Deeds.

**Riprap** means rocks, irregularly shaped, and at least six inches in diameter, used for erosion control and soil stabilization, typically used on ground slopes of two units horizontal to one unit vertical or less.

**River** means a free-flowing body of water including its associated floodplain wetlands from that point at which it provides drainage for a watershed of twenty-five (25) square miles to its mouth.

**Riverine** means relating to, formed by, or resembling a river (including tributaries), stream, brook, etc. (Ordained 9/26/11; effective 10/27/11)

**Road** means a route or track consisting of a bed of exposed mineral soil, gravel, asphalt, or other surfacing material constructed for or created by the repeated passage of motorized vehicles.

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**Rooming house** means a residential use in which the owner or manager of the facility resides on the premises and in which more than three persons who are not part of the owner/manager's family, are housed in rooms for compensation with or without meals. This includes fraternities and sororities.

**Roulette** means a game of chance in which players bet on the compartment of a revolving wheel into which a small ball will come to rest.

**Salt marsh** means areas along coastal waters (most often along coastal bays) which support salt-tolerant species, and where at average high tide during the growing season, the soil is regularly inundated by tidal waters. The predominant species is salt marsh cordgrass (*Spartina alterniflora*). More open areas often support widgeon grass, eelgrass, and Sago pondweed.

**Salt meadow** means areas which support salt-tolerant plant species bordering the landward side of salt marshes or open coastal water, where the soil is saturated during the growing season but which is rarely inundated by tidal water. Indigenous plant species include salt meadow cordgrass (*Spartina patens*) and black rush; common threesquare occurs in fresher areas.

**Screen** means a method of significantly reducing the impact of noise and unsightly visual intrusions with less offensive or more harmonious elements, such as plants, berms, fences, walls, or any appropriate combination thereof.

**Screening** means either, (1) a strip of at least ten (10) feet wide, densely planted (or having equivalent natural growth) shrubs or trees at least four feet high at the time of planting, of an evergreen type that will grow to a year-round dense screen at least six feet high in three years; or (2) an opaque wall or barrier of uniformly colored fence at least six feet in height. Screening of either type must be maintained in good condition at all times.

**Selected commercial recreation** means a recreational facility operated as a business and open to the public for a fee which is listed as one of the following types of allowed recreational activities:

1. Indoor commercial recreation limited to: billiards and pool, bowling alley, dancehall, swimming pool, ice skating rink, tennis, racquetball or squash courts, shooting or archery range, weight-lifting equipment center, aerobics/exercise center, roller skating rinks, basketball courts, gymnasium, concert hall, aquarium, botanical and zoological garden, bingo parlor, simulated sports; and
2. Outdoor commercial recreation limited to: riding stables, golf course, swimming pool, driving range, miniature golf, archery range, tennis courts, balloon rides, roller skating rink, botanical and zoological garden, and equestrian sports excluding racing.

Types of commercial recreation not listed are not considered to be included within the definition of "selected commercial recreation."

**Service drop** means any utility line extension which does not cross or run beneath any portion of a water body provided that:

1. In the case of electric service:
  - a. The placement of wires and/or the installation of utility poles is located entirely upon the premises of the customer requesting service or upon a roadway at right-of-way; and



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- b. The total length of the extension is less than one thousand (1,000) feet.
2. In the case of telecommunications service:
  - a. The extension, regardless of length, will be made by the installation of telephone wires to existing utility poles; or
  - b. The extension requiring the installation of new utility poles or placement underground is less than one thousand (1,000) feet in length.

**Setback** means the minimum horizontal distance from an identified object, line, boundary or feature to the nearest part of a regulated object, use or feature.

**Note:** See Chapter 16.7, for setbacks from water bodies and wetlands. See Article IV of Chapter 16.7 for applying setbacks in special situations.

**Setback from streams, water bodies and wetlands** means the minimum horizontal distance allowed from the upland edge of a wetland and/or from the normal high water line to the nearest part of a structure (excluding cornices, eaves, or gutters projecting not more than twenty-four (24) inches), roads, parking areas, or other regulated activities. See Table 16.9. Minimum Setbacks from Wetlands and Water Bodies for required horizontal distances, and Article IV of Chapter 16.7 for applying setbacks in special situations. Adjacent to tidal waters, setbacks are measured from the upland edge of the coastal wetland.

**Shop in pursuit of trades** means an establishment occupied by a business or craftsperson in a skilled trade, including, by way of example only, plumbing, carpentry, or electrical work. Not more than ten (10) people may be employed at and/or work from the shop. The shop may include work space, storage space, and/or office space. A shop in pursuit of trades does not include “construction services” which is separately defined.

**Shore frontage** means the width of a lot as it fronts the shore as measured in a straight line between the point of intersection of the side lot lines with the shoreline at normal high-water elevation.

**Shorefront development plan** means a plan for any development extending into or within one hundred (100) feet of the upland edge of a coastal wetland, or into or within one hundred (100) feet of the upland edge of a fresh water wetland shown on the zoning map, including but not limited to public and private access paths; piers, ramps and floats; storage of boats and/or floats; clearing of vegetation, visual impact and controls to assure continuing conformance to the plan.

**Shoreline** means the normal high water line or upland edge of a wetland.

**Sign** means any structure or part of the structure attached thereto or painted or represented thereon, which displays or includes any letter, word, model, banner, flag, pennant, insignia, trade name, trademark, logo, device, or representation used as, or which is in the nature of any announcement of the purpose of a business, entity or person, direction or advertisement. The term sign does not include a flag.

**Sign area** means the enclosed space within a geometric figure which contains the advertising message, illustration, insignia, or display, together with any frame, color, or other material which comprises the display and is used to differentiate or draw attention to the sign and away from background. Each face of a sign is considered a separate sign for area computations, but supporting brackets and posts are not included.

**Sign, Changeable Message** means any sign or portion thereof designed to allow characters, letters, and numbers on the face of the sign to be changed or rearranged.

**Sign, Freestanding** means any sign supported by a structure or supports that are permanently anchored in the ground and that is independent from any building.

**Sign, Real Estate** means any sign advertising real estate for sale, lease, or rent.

**Sign, Temporary** means a sign that is intended to remain where it is erected or placed for a period of time not to exceed twenty-one (21) days in any calendar quarter.

**Sign, Trailer** means a portable sign mounted on a chassis and wheels or supported by legs.

**Slot machine** means any machine which operates by inserting a coin, token, or similar object, setting the internal mechanism of the machine in motion, and by the application of the element of chance may deliver or entitle the person playing or operating the machine to receive cash, premiums, merchandise, tickets, or something of value.

**Soils.**

1. “Poorly drained soils” means soils where water is removed so slowly that the water table is at or within twelve (12) inches of the ground surface for six to nine months of the year.

2. “Very poorly drained soils” means soils in an area where water is removed so slowly that the water table is at or within twelve (12) inches of the ground surface for nine to ten (10) months of the year.

**Something of value** means: (1) any money or property; (2) any token, object, or article exchangeable for money, property, amusement, or entertainment; or (3) any form of credit or promise directly or indirectly contemplating transfer of money or property, or of any interest therein, or involving extension of a service, entertainment, or a privilege of playing at a game or scheme without charge.

**Special exception** means a use that would not be appropriate generally or without restriction throughout the zoning district, but which, if controlled as to number, area, location, or relation to the neighborhood, would promote the public health, safety, welfare, morals, order, comfort, convenience, appearance, prosperity, or general welfare. Such uses may be permitted in such zoning districts as special exceptions, if specific provision for such special exceptions is made in Chapter 16.3.

**Special Flood Hazard Area.** See “Area of special flood hazard.”

(Ordained 9/26/11; effective 10/27/11)

**Specialty Food and/or Beverage Facility** means a facility wherein food and/or beverage is produced, sold on a wholesale and/or retail basis, distributed and/or consumed on the premises. This may include but not be limited to a brew pub, micro-brewery, coffee roaster and/or other facilities producing crafted alcoholic or non-alcoholic beverages and/or artisan food.

(Ordained June 10, 2013; effective July 11, 2013)

**Start of construction** means the date the building/regulation activity permit was issued, provided the actual start of construction, repair, reconstruction, rehabilitation, addition, placement, substantial improvement or

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other improvement was within one hundred eighty (180) days of the permit date. The actual start means either the first placement of permanent construction of a structure on a site, such as the pouring of slab or footings, the installation of piles, the construction of columns, or any work beyond the stage of excavation; or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading and filling; nor does it include the installation of streets and/or walkways; nor does it include excavation for basement, footings, piers, or foundations or the erection of temporary forms; nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure. For a substantial improvement, the actual start of construction means the first alteration of any wall, ceiling, floor, or other structural part of a building, whether or not that alteration affects the external dimensions of the building.

(Ordained 9/26/11; effective 10/27/11)

**Story** means that portion of a building included between the upper surface of a floor and the upper surface of the floor or roof next above. Any building that contains no floors in the vertical plane, every ten (10) feet or portion thereof counts as a floor.

**Story above grade** means any story having its finished floor surface entirely above grade, except that a basement is considered as a story above grade where the finished surface of the floor above the basement is:

1. More than six feet (1,829 mm) above the grade plane;
2. More than six feet (1,829 mm) above the finished ground level for more than fifty percent (50%) of the total building perimeter; or
3. More than twelve (12) feet (3,658 mm) above the finished ground level at any point.

**Stream or brook** means a channel between defined banks including the floodway and associated floodplain wetlands where the channel is created by the action of surface water and characterized by the lack of upland vegetation or presence of aquatic vegetation and by the presence of a bed devoid of topsoil containing waterborne deposits on exposed soil, parent material, or bedrock.

**Street** means a way established or maintained under public authority, or a minimum forty (40) foot wide private way constructed to Town standards as contained in Chapters 16.8 and 16.9, approved by the Planning Board and plotted, dedicated and recorded, or a way shown on a plan of a subdivision duly approved by the Planning Board. Also included are such ways as alleys, avenues, boulevards, highways, roads, streets, and other rights-of-way.

**Street frontage** means a continuous portion of a boundary of a lot which abuts a street, ordinarily regarded as the front of the lot. When a lot is bounded by more than one street, any one of them, but only one, may be designated as the frontage street by the owner, provided that the lot meets the frontage requirement on that street, front, side and rear yard setbacks, and that the principal building is numbered on that street.

**Street line** means the exterior line of a street right-of-way which separates it from abutting lots.

**Structurally altered** means any work which requires or contemplates any changes to the structural capabilities of a building.

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(With amendments Ordained 9/26/11; 1/23/12; 5/30/12; 9/24/12; 3/25/13; 6/10/13; 1/27/14)

**Structure** means anything built for the support, shelter, or enclosure of persons, animals, goods, or property of any kind, or anything constructed or erected with a fixed location on or in the ground, or attached to something having a fixed location on or in the ground. The term includes decks. The term does not include fences less than eight (8) feet in height, nor any required by the Planning Board or Town Planner to be taller; flagpoles no higher than fifty (50) feet in height; signs located in conformance with Article X of Chapter 16.8; and electricity generators and propane and oil tanks for residential use only and the pads on which they are located, provided the pad is less than twenty (20) square feet in size.

**Subdivider** means any person, firm, corporation, or other legal entity making application for the subdivision of land or buildings within the Town.

**Subdivision** means the division of a tract or parcel of land into three or more lots within any five-year period that begins on or after September 23, 1971. This definition applies whether the division is accomplished by sale, lease, development, building or otherwise. The term “subdivision” also includes the division of a new structure of structures on a tract or parcel of land into three or more dwelling units within a five year period, the construction or placement of three or more dwelling units on a single tract of parcel of land and the division of an existing structure or structures previously used for commercial or industrial use into three or more dwelling units within a five year period, as set forth in 30-A M.R.S. §4410 as amended.

**Subdivision, Major** means any subdivision containing more than four lots, or any subdivision requiring any new public street extension, or the extension of public or municipal facilities.

**Subdivision, Minor** means a subdivision containing not more than four lots.

**Subsurface sewage disposal system** means a collection of treatment tank(s), disposal area(s), holding tank(s) and pond(s), surface spray system(s), cesspool(s), well(s), surface ditch(es), alternative toilet(s), or other devices and associated piping designed to function as a unit for the purpose of disposing of wastes or wastewater on or beneath the surface of the earth. The term does not include any wastewater discharge system licensed under 38 M.R.S. §414, any surface wastewater disposal system licensed under 38 M.R.S. §413, §1A, or any public sewer. The term does not include a wastewater disposal system designed to treat wastewater which is in whole or in part hazardous waste as defined in 38 M.R.S. §13.1.

**Sustained slope** means a change in elevation where the referenced percent grade is substantially maintained or exceeded throughout the measured area.

**Substantial damage** means damage of any origin sustained by a structure whereby the cost of restoring the structure to its before damage condition would equal or exceed fifty (50) percent of the market value of the structure before the damage occurred.

(Ordained 9/26/11; effective 10/27/11)

**Substantial improvement** means any reconstruction, rehabilitation, addition, or other improvement of a structure, the cost of which equals or exceeds fifty (50) percent of the market value of the structure before the start of construction of the improvement. This term includes structures which have incurred substantial damage, regardless of the actual repair work performed. The term does not, however, include either:

1. Any project for improvement of a structure to correct existing violations of state or local health, sanitary or safety code specifications which have been identified by the local code enforcement official and which are the minimum necessary to assure safe living conditions; or

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2. Any alteration of a historic structure, provided that the alteration will not preclude the structure's continued designation as a historic structure.  
(Ordained 9/26/11; effective 10/27/11)

**Temporary, intra-family dwelling unit** means a temporary accessory dwelling unit to a dwelling that is designed for and occupied by either a:

1. Person(s) related by blood or marriage within the sixth degree to an occupant of the property;
2. Personal care provider(s) to an occupant of the property;
3. Personal care receiver(s) from an occupant of the property; or
4. Person(s) with a demonstrably familial type relationship to an occupant of the property.

**Temporary structure** means a structure which by type and materials of its construction is erected for not more than thirty (30) days with a permit from the CEO. Such structures include tents, portable band stands, bleachers, reviewing stands, a mobile home, tractor trailers, or structures of a similar character. Temporary structures erected in conjunction with licensed circuses are not construed to be temporary structures under this title.

**Theater** means a building or portion of a building for the showing of motion pictures or the presentation of dramatic, musical, or other live performances.

**Tidal Waters** means all waters where the high water line is affected by the ebb and flow of tidal action.

### **Timber Harvesting.**

1. "Timber harvesting" means selective cutting or removal of ten or more cords or the equivalent thereof, but no more than forty (40) percent of the total volume of trees, four (4) inches or more in diameter, measured at 4½ feet above ground level on any lot in any ten (10) year period for the purpose of selling or processing forest products. Clearing of land necessary for approved construction is not considered as timber harvesting.

2. For the purposes of this Code, timber harvesting activities taking place outside the Shoreland Overlay Zone on land classified by the Town Assessor as enrolled in the State tree growth program (36 M.R.S. §571-584-A) which is conducted in compliance with a forest management and harvest plan prepared by a licensed professional forester is not considered timber harvesting.

**Tower** means any structure, whether freestanding or in association with a building or other permanent structure, that is designed and constructed primarily for the purposes of supporting one or more antennas, including self-supporting lattice towers, guyed towers, or monopole towers. The term includes radio and television transmission towers, microwave towers, common-carrier towers, cellular telephone towers, alternative tower structures, and similar structures.

**Tract or parcel of land** means all contiguous land in the same ownership except that lands located on opposite sides of a public or private street are considered separate tracts or parcels of land unless the street was established by the owner of land on both sides of the street after September 22, 1971.

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**Trailer** means any vehicle including campers used or so constructed as to permit its being used as a conveyance on the public streets and highways and may be duly licensed as such, and constructed in such a manner as will permit occupancy thereof as a temporary dwelling for one or more persons. A trailer is not construed as a mobile home for the purposes of this Code.

**Trailer park** means an area occupied or designed to be occupied by trailers for seasonal use only from May through October.

**Transportation terminal** means land and buildings used as a relay station for the transfer of a load from one vehicle to another. The terminal facility may include storage areas for trucks and buildings or areas for the repair of trucks associated with the terminal.

**Traveled way** means that portion of a road or driveway designed for vehicle travel. Where a road or driveway surface is paved, the traveled way is that portion of the road surface between the edges of the paved width.

**Tributary stream** means a channel between defined banks created by the action of surface water, whether intermittent or perennial, and which is characterized by the lack of upland vegetation or presence of aquatic vegetation and by the presence of a bed devoid of topsoil containing waterborne deposits on exposed soil, parent material, or bedrock, and which flows to a water body or wetland as defined. This definition does not include the term “stream” as defined elsewhere in this title, and only applies to that portion of the tributary stream located within the Shoreland or Resource Protection Overlay Zones of the receiving water body or wetland.

**Upland edge** means the boundary between upland and wetland.

For purposes of a coastal wetland, this boundary is the line formed by the landward limits of the salt tolerant vegetation and/or the elevation being six feet above mean sea level based on the North American Vertical Datum of 1988 (NAVD 88), including all area affected by tidal action. For purposes of a freshwater wetland, the upland edge is formed where the soils are not saturated for a time period sufficient to support wetland vegetation; or where the soils support the growth of wetland vegetation, but such vegetation is dominated by woody stems that are 20 feet tall or taller; whichever is more restrictive.

**Used car lot** means a lot exposed to the elements which is used for the sale of secondhand automobiles or trucks which can pass the state inspection tests in their existing conditions.

### **Variance.**

1. “Variance” means a relaxation of the terms of this Code where such relaxation will not be contrary to the public interest and where, owing to conditions peculiar to the property and not the result of the actions of the applicant or prior owner, a literal enforcement of the title will result in unnecessary or undue hardship.
2. As used in this title, a variance is authorized only for dimensional requirements related to height, area and size of structure, or size of yards and open spaces. Establishment or expansion of a use otherwise prohibited is not allowed by variance, nor may a variance be granted because of the presence of nonconforming uses in the particular zone or adjoining zone.

**Vegetation** means all live trees, shrubs, ground cover, and other plants.

**Veterinary hospital** means a commercial establishment, operated by a licensed veterinarian, for the medical and surgical care of sick or injured animals.

**Violation** means the failure of a structure or development to comply with a community's floodplain management regulations.

(Ordained 9/26/11; effective 10/27/11)

**Volume of a structure** means the volume of all portions of a structure enclosed by roof and fixed exterior walls as measured from the exterior faces of these walls and roof.

**Warehousing and storage** means premises where goods or materials are stored in an enclosed structure or in specific outdoor areas.

**Waste** means any unwanted or discarded substance or material, whether or not such substance or material has any future use and includes any substance or material that is spilled, leaked, pumped, poured, emitted, disposed of, emptied, or dumped onto the land or into the water.

**Water body** means any pond, river, brook, stream, intermittent stream, or coastal wetland.

**Water crossing** means any project extending from one bank to the opposite bank of a water body whether under, through, or over the watercourse. Such projects include but may not be limited to roads, fords, bridges, culverts, water lines, sewer lines, and cables as well as maintenance work on these crossings.

**Water-Dependent Use.** See “Functionally water-dependent use.”

**Wetland** means areas that under normal circumstances have hydrophytic vegetation, hydric soils, and wetland hydrology as determined in the Corps of Engineers Wetlands Delineation Manual - *Waterways Experiment Station Technical Report Y-87-1*, January 1987” (1987 manual). This definition of wetland is based on the 1987 manual and is not subject to further revisions and/or amendments.

**Wetland Alteration** means filling, dredging, removal of vegetation, muck or debris, draining or otherwise changing the hydrology; construction or repair of a structure. On a case-by-case basis and as determined by the Planning Board, the term "alteration" may exclude:

- (1) An activity of installing a fence post or planting shrubs by hand;
- (2) Alteration of an existing structure such as a bench or hand rail; and
- (3) The construction, repair or alteration of a structure, with minimal impact, such as a nesting box, pasture fence or staff gauge.

**Wetland creation** means conversion of a non-wetland area into a wetland where a wetland never existed.

**Wetland enhancement** means an activity increasing the value of one or more functions in an existing wetland. Activities may also include improvements to upland buffers where timber harvesting or other activities have degraded the value for wildlife.

**Wetland functions** means the roles wetlands serve which are of value to society or the environment including, but not limited to, flood water storage, flood water conveyance, groundwater recharge and discharge, erosion control, wave attenuation, water quality protection, scenic and aesthetic use, food chain support, fisheries, wetland plant habitat, aquatic habitat, and wildlife habitat.

**Wetland hydrology** means in general terms, a condition where permanent or periodic inundation or prolonged soil saturation is sufficient to create anaerobic conditions in the soil. According to the 1989 Manual, inundation or saturation for one week or more during the growing season and a water table within at least eighteen (18) inches of soil surface is required to meet the wetland hydrology criterion.

**Wetland preservation** means the maintenance of an area of wetlands or adjacent upland so that it remains in a natural or undeveloped condition. Preservation measures include, but are not limited to, conservation easements and land trusts.

**Wetland restoration** means an activity returning a wetland from a disturbed or altered condition with lesser acreage or fewer functions to a previous condition with greater wetland acreage or function.

**Wetland value** means the importance of a wetland with respect to the individual or collective functions it provides.

**Wetland vegetation** means those plants classified as Obligate, Facultative Wetland, or Facultative in the U.S. Fish and Wildlife Service publication, Wetland Plants of the State of Maine 1986, as amended or superseded.

**Wetlands associated with rivers** means wetlands contiguous with or adjacent to a river, and which during normal high water, are connected by surface water to the river. Also included are wetlands which are separated from the river by a berm, causeway, or similar feature less than one hundred (100) feet in width, and which have a surface elevation at or below the normal high-water line of the river. Wetlands associated with rivers are considered to be part of that great pond or river.

**Wetlands impact** means any disturbance, including but not limited to filling, dredging, draining, bridging, and cutting or clearing of vegetation, in the wetland and buffer areas.

**Wharf** means a structure on the shore, parallel to the shoreline of navigable waters, alongside of which vessels can be brought for loading or unloading.

**Wholesale business** means the sale of goods not produced on the premises primarily to customers engaged in the business of reselling the goods.

**Wireless communication services facilities (WCSF)** means any structure, antenna, tower, or other device which provides radio/television transmission, commercial mobile wireless services, unlicensed wireless services, cellular phone services, specialized mobile radio communications (SMR), common carrier wireless exchange access services, and personal communications service (PCS) or pager services and associated development. Telecommunications facilities are considered a principal use.

**Work** means activity related to physical change for improvements and not the engineering, production or correction of construction drawings, or real estate marketing.

**Yard** means an unoccupied space, open to the sky, on the same lot with a building or structure.

**Yard, Accessory Building Side and Rear** means, in the R-RL, R-U, R-S, AND B-L zones, accessory building side and rear yard setbacks that are at least ten (10) feet, except no building may be closer than thirty (30) feet to a principal building on an adjoining lot.



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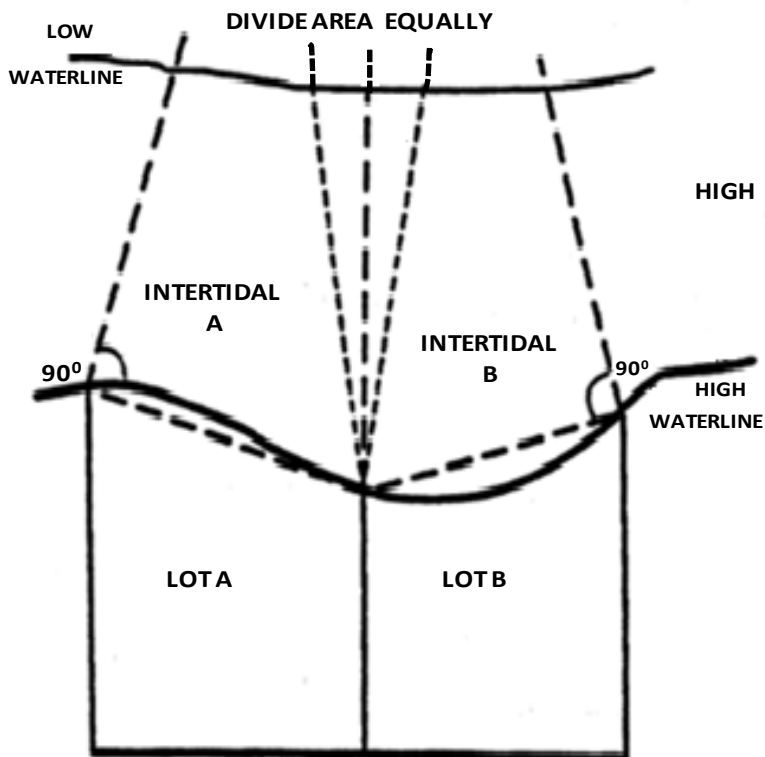
**Yard, Front** means an open area unoccupied by any structure, excluding cornices, eaves, or gutters projecting not more than twenty-four (24) inches, on the same lot with the building between the front line of the building and the front line of the lot and extending the full width of the lot as it abuts along a public or private street.

**Yard, Rear** means an open area unoccupied by any structure, excluding cornices, eaves, or gutters projecting not more than twenty-four (24) inches, on the same lot with the building between the rear line of the building and the rear line of the lot and extending the full width of the lot.

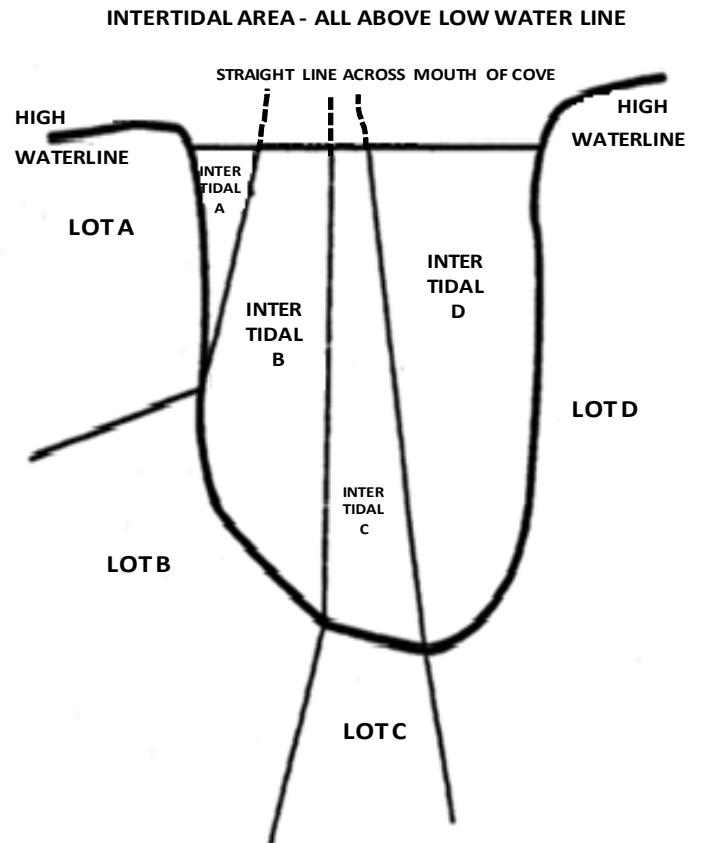
**Yard, Side** means an open area unoccupied by any structure, excluding cornices, eaves, or gutters projecting not more than twenty-four (24) inches, on the same lot with the building situated between the building and the side line of the lot and extending from the front yard to the rear yard. Any lot line not a rear line or a front line will be deemed a side line

**Figure 1 - Chapter 16.4**  
**FORMULA for DETERMINING OWNERSHIP of INTERTIDAL LAND**  
**as a GUIDE for IDENTIFYING ABUTTERS**

**DIAGRAM 1**



**DIAGRAM 2**



## **Chapter 16.3 LAND USE ZONE REGULATIONS**

### **Article I. General**

#### **16.3.1.1 Purpose.**

The purpose of this chapter is to establish zones, uses, standards and dimensional requirements for the Town to implement the adopted Comprehensive Plan.

#### **16.3.1.2 Establishment of Zones.**

To implement the provision of this Code, the Town is divided into the following base and overlay zones:

##### **16.3.1.2.1 Base Zones.**

Residential – Rural	R-RL
Residential – Suburban	R-S
Residential – Kittery Point Village	R-KPV
Residential – Urban	R-U
Residential - Village	R-V
Residential – Rural Conservation	R-RLC
Conservation	CON
Business – Local	B-L
Business – Local 1	B-L1
Business – Park	B-PK
Commercial	C-1, C-2, C-3
Industrial	IND
Mixed-Use	MU
Mixed Use – Badgers Island	MU-BI
Mixed Use – Kittery Foreside	MU-KF
Transportation – Maine Turnpike	T-MT

##### **16.1.3.2.2 Overlay Zones.**

Shoreland Overlay Zones	
Water Body/Wetland Protection Area – 250'	OZ-SL-250'
Stream Protection Area– 75'	OZ-SL-75'
Commercial Fisheries/Maritime Uses Overlay Zone	OZ-CFMU
Resource Protection Overlay Zone	OZ-RP

#### **16.3.1.3 Zoning Map.**

##### **16.3.1.3.1 Zone Boundaries.**

The location and boundaries of the zones are established as shown on the current official zoning map titled “Town of Kittery Maine Land Use Zoning Map” as may be amended by law. The zoning map with all explanatory matter thereon is hereby made part of this Code, and must be kept on file at the Town office. Said zoning map must be drawn at a scale of not less than one inch equals a thousand feet (1” = 1000’). Zone boundaries must be clearly delineated, and the map must have a legend indicating the name and symbol for each zone.

**16.3.1.3.2 Boundary Line Interpretation.**

Where uncertainty exists with respect to property or natural resource boundaries of the various zones as shown on the zoning map, the following rules apply:

1. Unless otherwise shown, zone boundary lines are coincidental with street centerlines and lot lines. Where zone boundary lines are designated on the zoning map those lines are construed to be the boundary of the zone.
2. Where the zone boundary lines are not otherwise indicated and where the property has been or may hereafter be divided into blocks and lots, the zone boundaries are construed to be the lot lines, and where the zones designated on the map accompanying and made a part of this Code are bounded approximately by lot lines, the lot lines are construed to be the boundary of the zones unless the boundary lines are otherwise indicated on the zoning map.
3. Where un-subdivided property lies within two or more zones, the zone boundary lines on the zoning map are determined by use of the scale appearing on the zoning map.
4. Where there is uncertainty regarding a zone boundary, the Planning Board is the local decision authority as to the exact location of said boundary. In the Shoreland and Resource Protection Overlay Zones, boundary redefinition must be supported by documentation from an appropriately licensed or certified Maine State professional.

**16.3.1.4 Overlay Zone.**

An overlay zone is a special purpose zone where additional regulations, beyond those set forth in the base zone apply. The regulations of the underlying zone must apply unless specified otherwise in the overlay zone.

**16.3.1.5 Zoning Map Amendments to Resource Protection and Shoreland Overlay Zones.**

If Zoning Map amendments are adopted that change the Shoreland or Resource Protection Overlay Zones, said amendments also must be approved by the Maine Commissioner of the State Department of Environmental Protection and then implemented within thirty (30) days of approval.

**16.3.1.6 Prohibited Uses.**

Uses in all zones are defined in Article II of this section by zone as permitted or special exception uses. Any use not listed as a permitted or a special exception use is prohibited in the zone.

## **Article II. Zone Definitions, Uses, Standards**

### **16.3.2.1 Residential – Rural R-RL.**

#### **A. Purpose.**

To protect the prevailing rural character of the Town and its natural rural quality from development sprawl by prescribing the most appropriate uses and standards.

#### **B. Permitted Uses.**

1. Dwellings or modular homes, exclusive of mobile homes;
2. School, hospital, long-term nursing care facility, convalescent care facility, municipal building or use, church, or other institution of educational, religious, philanthropic, fraternal or social nature;
3. Public open space recreational uses;
4. Any agricultural building or use except a sawmill, piggery, or the raising of poultry for commercial purposes;
5. Accessory uses and buildings including minor home occupations;
6. Day care facility;
7. Individual private campsite;
8. Accessory dwelling units; and
9. Cluster residential development. (Ordained 9/24/12; effective 10/25/12)

#### **C. Special Exception Uses.**

1. Shops used in the pursuit of trades including, but not limited to carpenter shops, boat shops and yards, plumbers, etc.;
2. Public utility facilities including substations, pumping stations and sewage treatment facilities;
3. Cemeteries;
4. Mobile home parks on sites of at least ten (10) acres subject to the special provisions of Article XII of Chapter 16.8;
5. Campgrounds and trailer parks;
6. Mineral extraction subject to Section 16.9.1.2;
7. Sawmill, piggery, the raising of poultry for commercial purposes;
8. Rooming house;
9. Riding stable, commercial kennel, or veterinary hospital;
10. Recreation activity buildings and grounds operated for profit exclusive of drive-in theaters;
11. Junkyard, including automobile salvage yard;
12. Temporary, intra-family dwelling unit;
13. Major home occupations as an accessory use, and
14. Dwellings, exclusive of mobile homes, in a major or minor subdivision.

#### **D. Standards.** The following standards must be met unless modified per Article XI Cluster Residential and Cluster Mixed-Use Development:

1. Design and performance standards in Chapter 16.8 and 16.9.
2. Dimensional standards:

Minimum land area per dwelling unit

40,000 square feet\*

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\*As per Chapter 16.2 definition of net residential density except to exempt properties which are unable to meet the square feet required for a single family dwelling unit, provided the lot was conforming prior to the date of this enactment. (Ordained 9/24/12; effective 10/25/12)

Minimum lot size	40,000 square feet
Minimum street frontage	150 feet
Minimum front yard	40 feet
Maximum building coverage	15 percent
Minimum rear and side yards	20 feet*

\*Buildings higher than 40 actual feet are to have side and rear yards not less than 50 percent of building height.

Maximum building height	35 feet*
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\*Minimum distance between principal buildings on the same lot is the height equivalent to the taller building.

Minimum setback from water body and wetland water dependent uses	0 feet
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Minimum setback from streams, water bodies and wetlands	in accordance with Table 16.9, Section 16.3.2.17 and Appendix A, Fee.
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### 3. Subdivision types and standards. (Ordained 9/24/12; effective 10/25/12)

a. Cluster residential development. In a cluster residential development, the above standards may be modified in accordance with special provisions of Article XI of Chapter 16.8, including that there is no minimum land area requirement per dwelling unit, and with the conditions that:

i. Minimum principal building separation as required by the Fire Chief, but not less than 20 feet.

b. Subdivision development (Per Special Exception Uses 16.3.2.1.C.14). In a subdivision development, standards 16.3.2.1.D.1 and 2 apply and include:

i. Minimum percentage of Common Open Space 15%.

4. In the case of junkyards and/or automobile salvage yards, the following special standards apply, which are in addition to the standards and provisions prescribed in Maine State Statutes, Title 30 M.R.S §3751-3760, and any changes thereto:

Minimum land area	400,000 square feet
Minimum street frontage	600 feet
Minimum distance from street or highway to junk concentration area	200 feet
Other standards as prescribed in Article XIV of Chapter 16.8.	

**16.3.2.2 Residential – Suburban R-S.**

**A. Purpose.**

To provide areas adjacent to the developed urban areas for future residential growth consistent with the availability of public utilities. To this end, the following apply.

**B. Permitted Uses.**

1. Dwellings in a single-family, duplex, and multi-unit residential configuration with not more than four units per building and mobile homes;
2. School or educational facility (including nursery schools), eldercare facility, hospital, long-term nursing care facility, convalescent care facility, municipal, county, or state building or use, church; or other institution of educational, religious, philanthropic, fraternal, political, or social nature. Any single listed use may not occupy more than five thousand (5,000) square feet of floor area;
3. Public open space recreational uses;
4. Any agricultural building or use except a sawmill, piggery, or the raising of poultry for commercial purposes;
5. Accessory uses and buildings including minor home occupations;
6. Day care facility;
7. Elderly day care facility;
8. Accessory dwelling units; and
9. Cluster residential development.

**C. Special Exception Uses.**

1. Rooming house;
2. Public utility facilities including substations, pumping stations and sewage treatment facilities;
3. Cemeteries;
4. Mineral extraction subject to Section 16.9.1.2;
5. Convenience store, neighborhood grocery facilities excluding sale of gasoline;
6. Temporary, intra-family dwelling unit;
7. Major home occupations as an accessory use;
8. Any use listed in subsection (B)(2) (Permitted Uses) of this section that occupies more than five thousand (5,000) square feet of floor area;
9. Dwellings in a multi-unit residential configuration with five to twelve (12) units per building; and
10. Dwellings, exclusive of mobile homes, in a major or minor subdivision.

**D. Standards.** The following standards must be met unless modified per Article XI Cluster Residential and Cluster Mixed-Use Development:

1. Design and Performance Standards. The design and performance standards of Chapters 16.8 and 16.9 must be met. The Design Handbook provides examples of appropriate design for nonresidential and multi-unit residential projects.
2. Dimensional Standards.

Minimum land area per dwelling unit\*  
without public sewage disposal  
with public sewage disposal

40,000 square feet  
30,000 square feet

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unless reduced in  
accordance with Note A.

\*As per Chapter 16.2 definition of net residential density except to exempt properties which are unable to meet the square feet required for a single family dwelling unit, provided the lot was conforming prior to the date of this enactment. (Ordained 9/24/12; effective 10/25/12)

Minimum lot size  
without public sewage disposal

40,000 square feet

with public sewage disposal

30,000 square feet  
unless reduced in  
accordance with Note A.

Minimum street frontage

150 feet unless reduced  
in accordance with Note A.

Minimum front yard

40 feet

Maximum building coverage

20 percent

Minimum rear and side yards

15 feet\*

\*Buildings higher than 40 actual feet must have side  
and rear yards not less than 50 percent of the building height.

Maximum building height

35 feet\*

\*Minimum distance between principal buildings on the  
same lot is the height equivalent to the taller building.

Minimum setback from water body and wetland water dependent uses

0 feet

Minimum setback from streams, water bodies and wetlands

in accordance with  
Table 16.9, Section 16.3.2.17 and  
Appendix A, Fee.

**Note A:** The required minimum land area per dwelling unit and/or minimum lot size for residential uses that are served by public sewage disposal and that are located outside of areas subject to shoreland zoning may be less than thirty thousand (30,000) square feet per lot/unit if the established average density of development in the immediate area of the use as determined below is less than thirty thousand (30,000) square feet.

If the average of the lot sizes and/or land area per dwelling unit of the developed residential lots that are located on the same street and within five hundred (500) feet of the parcel is less than thirty thousand (30,000) square feet, the required minimum lot size or required minimum land area per dwelling unit is the calculated average lot size or average land area per dwelling unit but not less than twenty thousand (20,000) square feet.

If the required minimum lot size is reduced, the required minimum street frontage for new residential uses served by public sewerage may also be reduced to the average of the lot frontage of existing developed residential lots that are located on the same street and within five hundred (500) feet of the parcel but in no case to less than one hundred (100) feet.



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### 3. Subdivision types and standards (Ordained 9/24/12; effective 10/25/12)

a. Cluster Residential Development. In a cluster residential development, the above standards may be modified in accordance with the special provisions of Article XI of Chapter 16.8, including that there is no minimum land area requirement per dwelling unit, and with the condition that:

i. Minimum principal building separation as required by the Fire Chief, but not less than 15 feet.

b. Subdivision development (Per Special Exception Uses 16.3.2.2.C.10). In a subdivision development, standards 16.3.2.2.D.1 and 2 apply and include:

i. Minimum percentage of Common Open Space 15%.

### 4. Mobile homes. Mobile homes must meet the standards of Article XI and XIII of Chapter 16.8.

### **16.3.2.3 Residential - Kittery Point Village R-KPV.**

The Kittery Point Village district encompasses the Kittery Point neighborhood extending from Spruce Creek and Crockett's Brook eastward to the easterly side of Cutts Island Lane.

#### **A. Purpose.**

To preserve the established character and development pattern of the Kittery Point neighborhood while assuring that any new development is consistent with this historical development pattern and is environmentally suitable. To this end, the following apply.

#### **B. Permitted Uses.**

1. Dwellings, excluding mobile homes, in a single-family, duplex, and multi-unit residential configuration with not more than four units per building;
2. School or educational facility (including nursery schools), municipal, county, or state building or use, church; or other institution of educational, religious, philanthropic, fraternal, political, or social nature. Any single listed use may not occupy more than five thousand (5,000) square feet of floor area;
3. Public open space recreational uses;
4. Any agricultural building or use except a sawmill, piggery, or the raising of poultry for commercial purposes;
5. Accessory uses and buildings including minor home occupations;
6. Day care facility;
7. Accessory dwelling units; and
8. Cluster residential development.

#### **C. Special Exception Uses.**

1. Rooming house;
2. Any use listed in subsection (B)(2) of this Section (Permitted Uses) that occupies more than five thousand (5,000) square feet of floor area;
3. Public utility facilities including substations, pumping stations and sewage treatment facilities;
4. Cemeteries;
5. Convenience store, neighborhood grocery facilities excluding sale of gasoline;
6. Temporary, intra-family dwelling unit;
7. Major home occupations as an accessory use;
8. The reuse of a designated historic building, in nonresidential use as of the effective date of this provision, as an art studio/gallery, museum, or business and professional office subject to standards B through L for a minor home occupation as set forth in Section 16.8.22.2; and
9. Dwellings, exclusive of mobile homes, in a major or minor subdivision.

**D. Standards.** The following standards must be met unless modified per Article XI Cluster Residential and Cluster Mixed-Use Development:

1. Design and Performance Standards in Chapters 16.8 and 16.9. The Design Handbook provides examples of appropriate design for nonresidential and multi-unit residential projects.

2. Dimensional Standards.:

Minimum land area per dwelling unit

40,000 square feet\*

\*As per Chapter 16.2 definition of net residential density except to exempt properties which are unable to meet the square feet required for a single family dwelling unit, provided the lot was conforming prior to the date of this enactment.

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Minimum lot size 40,000 square feet\*  
\*As per Chapter 16.2 definition of net residential density except to exempt properties which are unable to meet the square feet required for a single family dwelling unit, provided the lot was conforming prior to the date of this enactment. (Ordained 9/24/12; effective 10/25/12)

Minimum street frontage 150 feet unless reduced in accordance with Note A.

**Note A:** The required minimum street frontage for a new lot may be less than one hundred fifty (150) feet if the established pattern of street frontage in the immediate area of the lot as determined below is less than one hundred fifty (150) feet per lot.

The required minimum street frontage in this case is the average of the street frontage of existing developed residential lots that are located on the same street and within five hundred (500) feet of the parcel, but in no case, less than one hundred (100) feet.

Minimum front yard 40 feet  
Maximum building coverage 20 percent  
Minimum rear and side yards 15 feet\*  
\*Buildings higher than 40 actual feet must have side and rear yards not less than 50 percent of the building height.

Maximum building height 35 feet\*  
\*Minimum distance between principal buildings on the same lot is the height equivalent to the taller building.

Minimum setback from water body and wetland water dependent uses 0 feet

Minimum setback from streams, water bodies and wetlands in accordance with Table 16.9, Section 16.3.2.17 and Appendix A, Fee.

### 3. Subdivision types and standards.

a. Cluster Residential Development. In a cluster residential development, the above standards may be modified in accordance with the special provisions of Article XI of Chapter 16.8, including that there is no minimum land area requirement per dwelling unit, and with the conditions that:

i. Minimum principal building separation as required by the Fire Chief, but not less than 15 feet.

b. Subdivision development (Special Exception Uses 16.3.2.3.C.9). In a subdivision development, standards 16.3.2.3.D.1 and 2 apply and include:

i. Minimum percentage of Common Open Space 15%.

**16.3.2.4 Residential – Urban R-U.**

**A. Purpose.**

To preserve the physical, aesthetic and social quality of Kittery's urban area and, consistent with this goal, to provide therein for the location of a variety of residential uses in accordance with the standards of this Code. To this end, the following apply.

**B. Permitted Uses.**

1. Dwellings and manufactured housing;
2. Public open space recreational uses;
3. School (including day nursery), hospital, long-term nursing care facility, convalescent care facility, municipal or state building or use, church, or any other institution of educational, religious, philanthropic, fraternal, political or social nature,;
4. Accessory uses and buildings including minor home occupations;
5. Day care facility;
6. Conference center;
7. Accessory dwelling units; and
8. Cluster residential development.

**C. Special Exception Uses.**

1. Rooming house, apartment building, or elderly housing;
2. Professional offices;
3. Funeral homes;
4. Art galleries;
5. Public and private recreational uses exclusive of drive-in theaters;
6. Public utility facilities including substations, pumping stations, and sewage treatment facilities;
7. Inn;
8. Temporary, intra-family dwelling unit;
9. Major home occupations as an accessory use; and
10. Dwellings and manufactured housing in a major or minor subdivision.

**D. Standards.** The following standards must be met unless modified per Article XI Cluster Residential and Cluster Mixed-Use Development:

1. The Design and Performance standards in Chapters 16.8 and 16.9.
2. Dimensional Standards:

Minimum land area per dwelling unit	20,000 square feet*
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\*As per Chapter 16.2 definition of net residential density except to exempt properties which are unable to meet the square feet required for a single family dwelling unit, provided the lot was conforming prior to the date of this enactment.

Minimum lot size	20,000 square feet
Minimum street frontage	100 feet
Minimum front yard, all buildings	30 feet

Minimum rear and side yards, all buildings	15 feet*
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\*Buildings higher than 40 actual feet must have side

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and rear yards not less than 50 percent of building height.

Maximum building height 35 feet\*

\*Minimum distance between principal buildings on the same lot is the height equivalent to the taller building.

Maximum building coverage 20 percent

Minimum setback from water body and wetland water dependent uses 0 feet

Minimum setback from streams, water bodies and wetlands in accordance with Table 16.9, Section 16.3.2.17 and Appendix A, Fee.

### 3. Subdivision types and standards.

a. Cluster Residential Development. In a cluster residential development, the above standards may be modified in accordance with the special provisions of Article XI of Chapter 16.8, including that there is no minimum land area requirement per dwelling unit, and with the conditions that:

i. Minimum principal building separation as required by the Fire Chief, but not less than 15 feet.

b. Subdivision development (Special Exception Uses 16.3.2.4.C.10). In a subdivision development, standards 16.3.2.4.D.1 and 2 apply and include:

i. Minimum percentage of Common Open Space 15%.

4. In the case of housing for the elderly, the above standards may be modified in accordance with the special provisions of Article XI of Chapter 16.8, and with the condition that:

a. Municipal sewerage and water must be provided.

b. A minimum land area of three acres must be provided.

c. The maximum net density may not exceed four dwelling units per net residential acre. In no event may the Planning Board authorize a departure which increases the total number of dwelling units greater than that specified under the applicable zoning ordinance.

d. A single bedroom unit may not be less than five hundred fifty (550) square feet and a two-bedroom unit not less than six hundred fifty (650) square feet.

5. Modular housing to meet standards of Section 16.8.13.1.

### 16.3.2.5 Residential - Village R-V.

#### A. Purpose.

To recognize the special nature of the Admiralty Village neighborhood as a densely developed residential zone composed primarily of affordable housing on small lots serviced by sewer and water and to encourage reinvestment in maintaining and upgrading the neighborhood. Consistent with this goal, the zone provides for uses that reinforce the residential character and establish building standards that allow improvements on typical lots to enhance the residential quality of life in the neighborhood. To this end, the following will apply:

#### B. Permitted Uses.

1. Single and duplex family dwellings and modular homes, exclusive of mobile homes;
2. Public recreation;
3. Municipal, county, or state building or use;
4. Day care or nursery school facility limited to twelve (12) or fewer persons in care, in conformance with the standards for a minor home occupation (see Section 16.8.22.2);
5. Accessory buildings and structures including minor home occupations; and
6. Accessory dwelling units.

#### C. Special Exception Uses.

1. Public utility facilities, including substations, pumping stations, and sewage treatment facilities;
2. Major home occupations as an accessory use;
3. Day care or nursery school facility for thirteen (13) or more persons in care, in conformance with the standards for a major home occupation (see Section 16.8.22.3).

#### D. Standards.

1. All development and the use of land in the R-V zone must meet the following standards. In addition, the design and performance standards of Chapters 16.8 and 16.9 must be met. The Design Handbook provides examples of appropriate design for nonresidential and multi-unit residential projects.

2. The following space standards apply:

Minimum land area per dwelling unit	4,000 square feet*
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\*As per Chapter 16.2 definition of net residential density except to exempt properties which are unable to meet the square feet required for a single family dwelling unit, provided the lot was conforming prior to the date of this enactment.

Minimum lot size	6,000 square feet
Minimum street frontage	50 feet
Minimum front yard	15 feet
Minimum rear yard, dwellings/structures	15 feet
Minimum side yard, dwellings/structures	10 feet
Minimum rear and side yards for accessory buildings/structures that are accessory to a residential use and located at least four feet behind the predominant rear line of the principal building	3 feet
Maximum structure coverage	40 percent
Maximum height of principal dwellings/structures	35 feet
Maximum height of accessory buildings/structures	

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located closer than ten feet to a lot line

Maximum building coverage

Minimum setback from water body and wetland water dependent uses

Minimum setback from streams, water bodies and wetlands

15 feet

20 percent

0 feet

in accordance with  
Table 16.9, Section  
16.3.2.17 and Appendix A,  
Fee.

**16.3.2.6 Residential - Rural Conservation R-RC.**

**A. Purpose.**

To conserve and protect land areas of the Town which by their location and character require special measures to ensure low density development. To this end, the following apply:

**B. Permitted Uses.**

1. Dwellings or modular homes, exclusive of mobile homes;
2. Any agricultural building or use except sawmill, piggery, or the raising of poultry for commercial purposes;
3. Timber harvesting;
4. Public recreation;
5. Accessory uses and buildings including minor home occupations; and
6. Accessory dwelling units; and
7. Cluster residential development.

**C. Special Exception Uses.**

1. School, municipal building or use; or any other institution of educational, religious, philanthropic, fraternal, or social nature;
2. Public and private open space recreational uses exclusive of drive-in theaters;
3. Major home occupations as an accessory use;
4. Public utility facilities including substations, pumping stations, and sewage treatment facilities;
5. Cemeteries;
6. Day care facility;
7. Temporary, intra-family dwelling unit;
8. Dwellings, exclusive of mobile homes, in a major or minor subdivision.

**D. Standards.** The following standards must be met unless as may be modified per Article XI Cluster Residential and Cluster Mixed-Use Development:

1. The design and performance standards of Chapters 16.8 and 16.9 must be met.
2. The following dimensional standards apply:

Minimum land area per dwelling unit	80,000 square feet
Minimum lot size	80,000 square feet
Minimum street frontage	200 feet
Minimum front yard	40 feet
Maximum building coverage	6 percent
Minimum rear and side yards	20 feet*

\*Buildings higher than 40 actual feet must have side and rear yards not less than 50 percent of building height.

Maximum building height	35 feet*
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\*Minimum distance between principal buildings on the same lot is the height equivalent to the taller building.

Minimum setback from water body and wetland water dependent uses	0 feet
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Minimum setback from streams, water bodies and wetlands

in accordance with  
Table 16.9, Section  
16.3.2.17 and Appendix A,  
Fee.

### 3. Subdivision types and standards.

a. Cluster Residential Development. In a cluster residential development, the above standards may be modified in accordance with the special provisions of Article XI of Chapter 16.8, including that there is no minimum land area requirement per dwelling unit, and with the conditions that:

i. Minimum principal building separation as required by the Fire Chief, but not less than 20 feet.

b. Subdivision development (Special Exception Uses 16.3.2.6.C.8). In a subdivision development, the standards 16.3.2.6.D.1 and 2 apply and include:

i. Minimum percentage of Common Open Space

15%.

**16.3.2.7 Conservation CON.**

**A. Purpose.**

The purposes of the Conservation Zone are to preserve and protect natural environmental areas, conservation lands, park other areas including, but not limited to the Rachel Carson Wildlife Preserve, Town Forest, state and local parklands, and land with conservation easements that prohibit development in perpetuity; further the maintenance of safe and healthful conditions; prevent and control potential water pollution sources; protect spawning grounds, fish, aquatic life, bird and other wildlife habitat; and conserve shore cover, visual as well as actual point of access to inland and coastal waters and natural beauty.

**B. Permitted Uses.**

1. Existing land conservation uses.
2. Public recreation.
3. Accessory structure including restrooms.

**C. Special Exception Uses.**

1. Public facility

**D. Standards.**

1. The Design and Performance Standards of Chapters 16.8 and 16.9 must be met.

2. Dimensional standards:

Minimum land area per dwelling unit	Not applicable
Minimum lot size	None
Minimum street frontage	None
Minimum front yard	40 feet
Maximum building coverage	6 percent
Minimum rear and side yards	20 feet*
*If by variance or existing conditions a building is higher than 40 actual feet it must have side and rear yards not less than 50 percent of building height.	
Maximum building height	35 feet*
*Minimum distance between principal buildings on the same lot is the height equivalent to the taller building.	
Minimum setback from water body and wetland water dependent uses	0 feet
Minimum setback from streams, water bodies and wetlands	in accordance with Table 16.9, Section 16.3.2.17 and Appendix A, Fee.

**16.3.2.8 Business – Local B-L.**

**A. Purpose.**

To provide local sales, services, and business space within the Town.

**B. Permitted Uses.**

1. Dwellings or modular homes, exclusive of mobile homes;
2. Public open space recreational uses;
3. School or educational facility (including nursery schools), day care facility, eldercare facility, hospital, long-term nursing care facility, convalescent care facility, municipal, county, or state building or use, church; or any other institution of educational, religious, philanthropic, fraternal, political or social nature;
4. Accessory uses and buildings including minor or major home occupations;
5. Retail business and service establishments, but excluding those of which the principal activity entails outdoor sales and/or storage and excluding those specifically mentioned under subsection C of this Section;
6. Business and professional offices;
7. Mass transit station;
8. Commercial parking lot or parking garage;
9. Restaurant;
10. Art studio or gallery;
11. Convenience store, food store, grocery store;
12. Personal service;
13. Business service;
14. Building materials, but excluding those of which the principal activity entails outdoor sales and/or storage;
15. Garden supply;
16. Conference center;
17. Commercial boating and fishing uses and facilities, provided only incidental cleaning and cooking of seafood occur at the site;
18. Aquaculture;
19. Accessory dwelling units; and
20. Specialty food and/or beverage facility.

**C. Special Exception Uses.**

1. Motel, hotel, inn, or rooming house;
2. Funeral home;
3. Gasoline sales: (a) not located within one thousand (1,000) feet of an existing station, (b) not located within one thousand (1,000) feet of any private residence, and (c) not located within one hundred fifty (150) feet of any existing structure;
4. Place of public assembly, including theater;
5. Public utility facilities including substation, pumping stations, and sewage treatment facilities;
6. Apartment building;
7. Temporary, intra-family dwelling unit;
8. Mechanical service; and
9. Residential dwelling units as part of a mixed-use building.

**D. Standards.**

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1. All development and the use of land in the B-L zone must meet the following standards. Kittery's Design Handbook illustrates how these standards can be met. In addition, the design and performance standards of Chapters 16.8 and 16.9 must be met.

a. Parking.

One row of parking spaces and a related access drive may be located between the front property line and the front wall of the building extending the full width of the lot. All other parking must be located to the side and/or rear of the building. All new or revised parking must be visually screened through the use of landscaping, earthen berms, and/or fencing from adjacent public streets or residential properties (See the Design Handbook for appropriate examples).

b. Building Design Standards.

Kittery's characteristic buildings reflect its historic seacoast past. The primary architectural styles are New England Colonial (such as Cape Cod and saltbox), Georgian, Federal, and Classical Revival. New buildings must be compatible with Kittery's characteristic styles in form, scale, material, and color. In general, buildings should be oriented with the front of the building facing the street on which the building is located. The front or street facade must be designed as the front of the building. The front elevation must contain one or more of the following elements: (1) a "front door" although other provisions for access to the building may be provided, (2) windows, or (3) display cases (See Design Handbook for examples of acceptable materials and designs). Strict imitation is not required. Design techniques can be used to maintain compatibility with characteristic styles and still leave enough flexibility for architectural variety. To achieve this purpose, the following design standards apply to new and modified existing building projects:

c. Landscaping Standards.

i. Landscape Planter Strip.

(A) Ground Cover. The entire landscape planter must be vegetated except for approved driveways, walkways, bikeways, and screened utility equipment.

(B) Street-side Trees. A minimum of one tree must be planted for each twenty-five (25) feet of street frontage. The trees may be spaced along the frontage or grouped or clustered to enhance the visual quality of the site (See Design Handbook for examples). The trees must be a minimum 2.5 inch caliper, and be at least twelve (12) feet high at the time of planting. The species must be selected from the list of approved street trees in the Design Handbook. Existing large healthy trees must be preserved if practical and will count toward this requirement.

(Ordained 9/26/11; effective 10/27/11)

i. Exterior Building Materials and Details.

Building materials and details strongly define a project's architectural style and overall character (See Design Handbook for examples of acceptable materials, building scale, and designs). "One-sided" schemes are prohibited; similar materials and details must be used on all sides of a building to achieve continuity and completeness of design. Predominant exterior building materials must be of good quality and characteristic of Kittery, such as horizontal wood Board siding, vertical wood Boards, wood shakes, brick, stone or simulated stone, glass and vinyl, or metal clapboard.

ii. Roofs.

A building's prominent roofs must be pitched a minimum of 4:12 unless demonstrated to the Planning Board's satisfaction that this is not practicable. Acceptable roof styles are gabled, gambrel, and hipped roofs. Flat roofs, shed roofs, and roof facades (such as "stuck on" mansards) are not acceptable as prominent roof

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forms except as provided above. Roof colors must be muted (See Design Handbook for examples). The roof design must screen or camouflage rooftop protrusions to minimize the visual impact of air conditioning units, air handler units, exhaust vents, transformer boxes, and the like (See Design Handbook for examples of appropriate treatments).

### iii. Loading Docks and Overhead Doors.

Loading docks and overhead doors must be located on the side or rear of the building and screened from view from adjacent properties in residential use.

### c. Landscaping Standards.

To achieve attractive and environmentally sound site design, and appropriate screening of parking areas, in addition to the landscaping standards contained in Chapters 16.8 and 16.9, the following landscaping requirements apply to new and modified existing developments:

#### i. Landscape Planter Strip.

A vegetated landscape planter strip must be provided a minimum of fifteen (15) feet in depth adjacent to the right-of-way of all public roads. The Planning Board may reduce the required depth of the landscape planter strip if a sidewalk is provided in front of the parcel and the area between the front property line and the front wall of the building will be designed and used as a pedestrian space. The landscape planter strip must include the following landscape elements:

(A) Ground Cover. The entire landscape planter must be vegetated except for approved driveways, walkways, bikeways, and screened utility equipment.

(B) Streetside Trees. A minimum of one street tree must be planted for each twenty-five (25) feet of street frontage. The trees may be spaced along the frontage or grouped or clustered to enhance the visual quality of the site (See Design Handbook for examples). The trees must be a minimum 2.5 inch caliper, and be at least twelve (12) feet high at the time of planting. The species must be selected from the list of approved street trees in the Design Handbook. Existing large healthy trees must be preserved if practical and will count toward this requirement.

#### (C) Special Situations.

(1) Expansions of less than one thousand (1,000) square feet to existing uses are exempt from the landscaping standard of this subsection.

(2) Depth of Landscape Planter Strip. In instances where the required minimum depth of the landscape planter strip is legally utilized, in accordance with previous permits or approvals, for parking, display, storage, building, or necessary vehicle circulation, the depth may be narrowed by the Planning Board to the minimum extent necessary to achieve the objective of the proposed project, provided that shrubs and perennials are planted along the street frontage to soften the appearance of the development from the public street.

(3) Additions and Changes in Use. For additions to existing buildings and changes of residential structures to a nonresidential use, one streetside tree (See list of street trees in Design Handbook) is required to be planted for every one thousand (1,000) square feet of additional gross floor area added or converted to nonresidential use. In instances where parking, display area, storage, building, or necessary vehicle circulation exists at the time of enactment of this Section, the required trees may be clustered and/or relocated away from the road as is necessary to be practicable. The preservation of existing large trees is

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encouraged; therefore the Planning Board may permit the preservation of existing healthy, large, mature trees within the landscape planter strip or other developed areas of the site to be substituted for the planting of new trees.

### ii. Outdoor Service and Storage Areas.

Service and storage areas must be located to the side or rear of the building. Facilities for waste storage such as dumpsters must be located within an enclosure and be visually buffered by fencing, landscaping, and/or other treatments (See Design Handbook for examples of appropriate buffering).

### d. Traffic and Circulation Standards.

Sidewalks and roadways must be provided within the site to internally join abutting properties that are determined by the Planning Board to be compatible. In addition, safe pedestrian route(s) must be provided to allow pedestrians to move within the site and between the principal customer entrance and the front lot line where a sidewalk exists or will be provided or where the Planning Board determines that such a route is needed for adequate pedestrian safety and movement (See Design Handbook for appropriate examples).

### e. Open Space Standards.

Open space must be provided as a percentage of the total area of the lot, including freshwater wetlands, water bodies, streams, and setbacks. Fifteen percent (15%) of each lot must be designated as open space. Required open space must be shown on the plan with a note dedicating it as “open space.” The open space must be located to create an attractive environment on the site, minimize environmental impacts, protect significant natural features or resources on the site, and maintain wildlife habitat. Individual large, healthy trees and areas with mature tree cover should be included in the open space. Where possible, the open space must be located to allow the creation of continuous open space networks in conjunction with existing or potential open space on adjacent properties. The required amount of designated open space is reduced to ten percent (10%) of each lot that is less than forty thousand (40,000) square feet in size.

## 2. The following space standards apply:

Minimum land area per dwelling unit when all floors are residential	20,000 square feet if served by on-site sewage disposal
	8,000 square feet if served by the public sewerage system*
Minimum land area per dwelling unit when the entire first floor is used for nonresidential uses	20,000 square feet if served by on-site sewage disposal
	4,000 square feet if served by the public sewerage system
Minimum lot size	None*
Minimum street frontage	None*
Minimum front yard	15 feet*

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Maximum front setback of the principal building	60 feet
Minimum rear and side yards	10 feet*
*Except as otherwise required by the buffer provisions of this Code, and except where the side and/or rear yards abut a residential district or use, in which case a minimum of 15 feet or 50 percent of the building height is required.	
Maximum building height	40 feet*
Maximum building and outdoor stored material coverage	None, except that side, rear and front yards must be maintained
*Except that space standards for single and two-family residential uses are the same as for those of the urban residential district.	
Minimum setback from water body and wetland water dependent uses	0 feet
Minimum setback from streams, water bodies and wetlands	in accordance with Table 16.9, Section 16.3.2.17 and Appendix A, Fee.

**16.3.2.9 Business – Local 1 B-L1.**

**A. Purpose.**

To encourage a smart growth/urban design pattern that will serve as a focal point for the provision of local sales, urban residences, services and business space. The goal of this Section is to create an attractive, functional, and vibrant pedestrian-scaled neighborhood supporting a mix of commercial and residential uses. This type of development reflects a traditional New England pattern of building where commercial uses are located on the first floor and housing on the upper floors.

**B. Permitted Uses.**

1. Dwellings or modular homes, exclusive of mobile homes;
2. Apartments;
3. Public open space recreational uses;
4. Inn;
5. School or educational facility (including nursery schools), day care facility, eldercare facility, hospital, long-term nursing care facility, convalescent care facility, municipal, county, or state building or use, church; or any other institution of educational, religious, philanthropic, fraternal, political or social nature;
6. Accessory uses and buildings including minor or major home occupations;
7. Retail business and service establishments excluding those of which the principal activity entails outdoor sales and/or storage and excluding those specifically mentioned under subsection C of this Section;
8. Business and professional offices;
9. Mass transit station;
10. Commercial parking lot or parking garage;
11. Restaurant;
12. Art studio or gallery;
13. Convenience store, food store, grocery store;
14. Personal service;
15. Business service;
16. Building materials but excluding those of which the principal activity entails outdoor sales and/or storage;
17. Garden supply;
18. Conference center;
19. Accessory dwelling units; and
20. Specialty food and/or beverage facility.

**C. Special Exception Uses.**

1. Motel, hotel, rooming house;
2. Funeral home;
3. Gasoline sales: (a) not located within one thousand (1,000) feet of an existing station, (b) not located within one thousand (1,000) feet of any private residence, and (c) not located within one hundred fifty (150) feet of any existing structure;
4. Place of public assembly, including theater;
5. Public utility facilities including substation, pumping stations, and sewage treatment facilities;
6. Farmer's market;
7. Temporary, intra-family dwelling unit; and
8. Mechanical service.



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### D. Standards.

All development and the use of land in the B-L1 zone must meet the following standards. Kittery's Design Handbook illustrates how these standards can be met. In addition, the design and performance standards of Chapters 16.8 and 16.9 must be met.

1. The following space standards apply:

Minimum land area per dwelling unit	
when all floors are residential	8,000 square feet
when the entire first floor is in nonresidential use	3,500 square feet

Minimum parking spaces per dwelling unit	1.5
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Minimum lot size	20,000 square feet
Minimum street frontage per building	50 feet
Maximum front yard	30 feet*

\*This area must be designed to promote a pedestrian public space, which includes, but is not limited to, landscaping, sidewalks, and sitting areas. Parking and outdoor storage are prohibited anywhere in the front yard of the structure, except for seasonal sales items.

Minimum rear and side yards	10 feet*
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\*Except as otherwise required by the buffer provisions of this title, and except where the side and/or rear yards abut a Residential Zone or use, in which case a minimum of 15 feet, or 50 percent of the building height, whichever is greater, is required.

(Ordained 9/26/11; effective 10/27/11)

Maximum building height	40 feet
Maximum building and outdoor stored material coverage	50 percent
Minimum area dedicated to landscaped area	15 percent

Hours of Operation — Must be noted on the final site plan and are determined by the Planning Board on a case-by-case basis. All lighting other than designated security lighting must be extinguished outside of noted hours of operation.

Minimum setback from water body and wetland water dependent uses	0 feet
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Minimum setback from streams, water bodies and wetlands	in accordance with Table 16.9, Section 16.3.2.17 and Appendix A, Fee.
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2. Parking.

- a. Parking must be on the side or backyard;
- b. Shared access must be provided where feasible;

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c. New or revised parking must be visually screened through the use of landscaping, earthen berms, and/or fencing from adjacent public streets or residential properties (See the Design Handbook for appropriate examples).

### 3. Building Design Standards.

Kittery's characteristic buildings reflect its historic seacoast past. The primary architectural styles are New England Colonial (such as Cape Cod and saltbox), Georgian, Federal, and Classical Revival. New buildings must be compatible with Kittery's characteristic styles in form, scale, material, and color. In general, buildings should be oriented to the street with the front of the building facing the street. Architectural design and structure location must reinforce the human scale and pedestrian nature of the neighborhood by using orientation and building massing, exterior building materials, and roofing as set forth below. The front or street facade must be designed as the front of the building. The front elevation must contain one or more of the following elements: (1) a "front door" although other provisions for access to the building may be provided, (2) windows, or (3) display cases (See Design Handbook for examples of acceptable materials and designs). Main entries should be clearly visible from the street and provide adequate cover from the weather. Strict imitation is not required. Design techniques can be used to maintain compatibility with characteristic styles and still leave enough flexibility for architectural variety. To achieve this purpose, the following design standards apply to new and modified existing building projects:

#### a. Exterior Building Materials and Details.

Building materials and details strongly define a project's architectural style and overall character (See Design Handbook for examples of acceptable materials, building scale, and designs). "One-sided" schemes are prohibited; similar materials and details must be used on all sides of a building to achieve continuity and completeness of design. Predominant exterior building materials must be of good quality and characteristic of Kittery, such as horizontal wood Board siding, vertical wood Boards, wood shakes, brick, stone or simulated stone, glass and vinyl, or metal clapboard.

#### b. Roofs.

A building's prominent roofs must be pitched a minimum of 4:12 unless demonstrated to the Planning Board's satisfaction that this is not practicable. Acceptable roof styles are gabled, gambrel, and hipped roofs. Flat roofs, shed roofs, and roof facades (such as "stuck on" mansards) are not acceptable as prominent roof forms except as provided above. Roof colors must be muted (See Design Handbook for examples). The roof design must screen or camouflage rooftop protrusions to minimize the visual impact of air conditioning units, air handler units, exhaust vents, transformer boxes, and the like (See Design Handbook for examples of appropriate treatments).

#### c. Loading Docks and Overhead Doors.

Loading docks and overhead doors must be located on the side or rear of the building and must be screened from view from adjacent properties in residential use.

### 4. Landscaping/Site Improvements.

To achieve attractive and environmentally sound site design, and appropriate screening of parking areas, in addition to the landscaping standards contained in Chapters 16.8 and 16.9, the following landscaping requirements apply to new and modified existing developments:

(Ordained 9/26/11; effective 10/27/11)

a. Fifteen percent (15%) of site area must be landscaped;

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- b. Outdoor spaces must be created to reinforce commercial activities and pedestrian-friendly access. Outdoor spaces are encouraged throughout the site with special attention along the sidewalk and street. Architectural features such as decorative pavers, planters, and benches are encouraged in the creation of these spaces;
- c. The space between the roadway and any buildings must be attractively landscaped using trees, flowers, shrubs, fencing or stonewalls to reinforce the site's unique character and building design;
- d. A buffer between commercial and residential zones must be established and be landscaped with a visually pleasing mixed planting type;
- e. Solid fencing, berms, and/or stonewalls must be used to prevent headlights from shining on abutting residential property. Incorporating flowering vines and other plantings on fences and blank exterior walls is encouraged;
- f. Provide street trees in a pattern reflecting the existing streetscape. For new buildings, a minimum of one street tree must be planted for each twenty-five (25) feet of street frontage. The trees may be spaced along the frontage or grouped or clustered to enhance the visual quality of the site (See Design Handbook for examples). The trees must be a minimum 2.5 inch caliper, and be at least twelve (12) feet high at the time of planting. The species must be selected from the list of approved street trees in the Design Handbook. Existing large healthy trees must be preserved if practical and will count toward this requirement.
- g. For additions to existing buildings and changes of residential structures to a nonresidential use, one street-side tree (See list of street trees in Design Handbook) is required to be planted for every one thousand (1,000) square feet of additional gross floor area added or converted to nonresidential use. In instances where parking, display area, storage, building, or necessary vehicle circulation exists at the time of enactment of this Section, the required trees may be clustered and/or relocated away from the street as is necessary to be practicable. The preservation of existing large trees is encouraged; therefore the Planning Board may permit the preservation of existing healthy, large, mature trees within developed areas of the site to be substituted for the planting of new trees;  
(Ordained 9/26/11; effective 10/27/11)
- h. Service and storage areas must be located to the rear of the building and be shielded using plantings and/or fencing. Facilities for waste storage such as dumpsters must be located within an enclosure and be visually buffered by fencing, landscaping, and/or other treatments (See Design Handbook for examples of appropriate buffering);
- i. No storage may be in front of buildings except seasonal sales items;
- j. Lighting and landscape plans must be provided and approved as a part of final plan;
- k. Lighting along the street must be of a pedestrian scale using an architectural fixture appropriate to the neighborhood.

### 5. Traffic and Circulation Standards.

Sidewalks and roadways must be provided within the site to internally join abutting properties that are determined by the Planning Board to be compatible. In addition, safe pedestrian route(s) must be provided to allow pedestrians to move within the site and between the principal customer entrance and the front lot line

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where a sidewalk exists or will be provided or where the Planning Board determines that such a route is needed for adequate pedestrian safety and movement (See Design Handbook for appropriate examples).

**16.3.2.10 Business – Park B-P.**

**A. Purpose.**

To encourage investment that promotes development of a high quality park-like setting for both the business and residential communities. Cluster mixed-use development must be used on larger tracts of land where offices, retail sales, services, lodging, open space, housing and light manufacturing space are blended with residential and moderate entertainment to foster general business growth and a sense of community. The intent of cluster mixed-use development is to provide a more efficient use of land than might be obtained through segregated development procedures.

**B. Permitted Uses.**

1. The following land uses are permitted for projects that are cluster mixed-use developments:
  - a. Art studio/gallery;
  - b. Building materials and garden supply;
  - c. Business and professional offices;
  - d. Business services;
  - e. Commercial parking lot or parking garage;
  - f. Conference center;
  - g. Cluster residential development;
  - h. Grocery, food store, convenience store, including gas station;
  - i. Light industry;
  - j. Mass transit station;
  - k. Mechanical services, excluding junkyard;
  - l. Motel, hotel, rooming house, inn;
  - m. Personal service;
  - n. Place of public assembly, including theater;
  - o. Public open space recreational uses, recreational facilities, and selected commercial recreation;
  - p. Public utility facilities including substations, pumping stations, and sewage treatment facilities;
  - q. Repair services;
  - r. Research and development;
  - s. Restaurant;
  - t. Retail uses and wholesale businesses excluding used car lots and junkyards;
  - u. School (including day nursery), university, museum, hospital, municipal or state building or use, church, or any other institution of educational, religious, philanthropic, fraternal, political or social nature;
  - v. Shops in pursuit of trade;
  - w. Veterinary hospital;
  - x. Warehousing and storage; and
  - y. Specialty food and/or beverage facility.
2. The following land uses are permitted for projects that are not cluster mixed-use developments:
  - a. Business and professional offices;
  - b. Accessory uses and buildings; and
  - c. Business services.

**C. Special Exception Uses. None**

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### D. Standards.

The following standards must be met unless modified per Article XI Cluster Residential and Cluster Mixed-Use Development. Multiple-parcel development is subject to Chapter 16.10, Article II, Master Site Development Plan:

1. Design and performance standards in Chapters 16.8 and 16.9. The Design Handbook provides examples of appropriate design for nonresidential and multi-unit residential projects.
2. Except for cluster mixed-use developments, the following space standards apply.

Minimum land area per dwelling unit	10,000 square feet with sewer service
Minimum lot size	120,000 square feet
Minimum street frontage	150 feet
Minimum front yard	50 feet
Minimum rear and side yards	30 feet*

\*Except as may be required by the buffer provisions of this Code, and except where the side and/or rear yards of the proposed nonresidential-use abut a residential district or use, in which case a minimum of forty (40) feet is required.

Patios, sheds, parking lots and golf courses must have a minimum setback of 50 feet from streams, water bodies and wetlands.

Maximum building height	40 feet
Maximum building and outdoor stored material coverage	50 percent

3. Cluster Residential Development. In a cluster residential development, the above standards may be modified in accordance with the special provisions of Article XI of Chapter 16.8, including that there is no minimum land area requirement per dwelling unit, and with the conditions that:

- i. Minimum Principal building separation as required by the Fire Chief, but not less than 10 feet.

#### 4. Other standards.

##### a. Parking.

All new or revised parking must be visually screened through the use of landscaping, earthen berms, stone retaining walls and/or fencing from adjacent public streets and abutting properties (see the Design Handbook for appropriate examples).

##### b. Building Design Standards.

Kittery's characteristic buildings reflect its historic seacoast past. The primary architectural styles are New England colonial (such as Cape Cod and saltbox), Georgian, Federal, and Classical Revival. New buildings must be compatible with Kittery's characteristic styles in form, scale, material, and color. The front elevation must contain one or more of the following elements: (i) windows, or (ii) display cases (see design handbook for examples of acceptable materials and designs). Strict imitation is not required. Design techniques must be used to maintain compatibility with characteristic styles and still leave enough flexibility for architectural variety. To achieve this purpose, the following design standards apply to new and modified existing building projects:

- i. Exterior Building Materials and Details.

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Building materials and details strongly define a project's architectural style and overall character (see the Design Handbook for examples of acceptable materials, building scale, and designs). "One-sided" schemes are prohibited; similar materials and details must be used on all sides of a building to achieve continuity and completeness of design. Predominant exterior building materials must be of good quality and characteristic of Kittery, such as horizontal wood board siding, vertical wood boards, wood shakes, brick, stone or simulated stone, glass and vinyl, or metal clapboard.

### ii. Roofs.

A building's prominent roofs must be pitched a minimum of 4:12 unless demonstrated to the Planning Board's satisfaction that this is not practicable. The Board reserves the right to evaluate such on each and all specific proposals. Acceptable roof styles are gabled, gambrel, and hipped roofs. Shed roofs, and roof facades (such as "stuck on" mansards) are not acceptable as prominent roof forms except as provided above. Flat roofs may be considered in context where it can be demonstrated to the Planning Board's satisfaction that the structure is not obtrusive and where visual impact can be shown to be minimal. The roof design must screen or camouflage rooftop protrusions to minimize the visual impact of air conditioning units, air handler units, exhaust vents, transformer boxes, and the like (see the Design Handbook for examples of appropriate treatments).

### iii. Loading Docks and Overhead Doors.

Loading docks and overhead doors must be located on the side or rear of the building and screened from view from adjacent properties in residential use.

### c. Landscaping Standards.

To achieve attractive and environmentally sound site design, and appropriate screening of parking areas, in addition to the landscaping standards contained in Chapter 16.8, the following landscaping requirements apply to new and modified existing developments:

#### i. Landscape Planter Strip.

Landscape planter strips, interior and exterior to the project, are encouraged. A minimum of forty (40) feet in depth of vegetated landscape buffer must be provided adjacent to all public right-of-way lines that are common to parcel exterior boundary lines and include the following landscape elements:

(A) Ground Cover. The entire landscape planter strip must be vegetated except for approved driveways, walkways, bikeways, and screened utility equipment.

(B) Street Side Trees. In the event project development is to be approved based on a development master plan, development standards are to be applied to the land as defined by its perimeter, rather than by the individual lots, tracts and parcels into which the land may be divided.

Development not based on a master development plan must, as a minimum, provide one street tree for each twenty-five (25) feet of street frontage.

The trees may be spaced along the frontage or grouped or clustered to enhance the visual quality of the site (see the Design Handbook for examples). The trees must be a minimum 2.5 inch caliper, and be at least twelve (12) feet high at the time of planting. The species should be selected from the list of recommended street trees in the Design Handbook. Existing large healthy trees must be preserved if practical and will count toward this requirement.

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(C) Planter Strip. Shrubs and flowering perennials must be planted at a minimum of fifteen (15) plants per forty (40) linear feet of street frontage unless existing woodlands are being retained or such planting is inconsistent with the retention of rural landscape features. The plant material should be selected from the list of recommended materials in the Design Handbook. The plants must be placed within the planter strip to enhance the visual character of the site and augment natural features and vegetation (see the Design Handbook for examples of appropriate treatments).

### ii. Outdoor Service and Storage Areas.

Facilities for waste storage such as dumpsters must be located within an enclosure and be visually buffered by fencing, landscaping, and/or other treatments (see the Design Handbook for examples of appropriate buffering).

### d. Traffic and Circulation Standards.

Sidewalks and roadways internal to the parcel must provide adequate pedestrian and traffic circulation both internally and externally, and provide safe and sufficient connectivity to the surrounding neighborhoods. (See the Design Handbook for appropriate examples).

### e. Open Space Standards.

Open space must be provided as a percentage of the total parcel area, including freshwater wetlands, water bodies, streams, and setbacks. Twenty-five percent (25%) of each parcel, or individual lot if applicable, must be designated as open space. Required open space must be shown on the plan with a note dedicating it as "open space." The open space must be situated to create an attractive environment on the site, minimize environmental impacts, and protect significant natural features and resources. Where possible:

i. Individual large, healthy trees and areas with mature tree cover will be included in the open space; and

ii. The open space will be located to allow the creation of continuous open space networks in conjunction with existing or potential open space on adjacent properties.



**16.3.2.11 Commercial (C-1, C-2, C-3).**

**A. Purpose.**

To provide general retail sales, services, and business space within the Town in locations capable of conveniently serving community-wide and/or regional trade areas, and oriented primarily to automobile access. To reflect the differing character of various parts of the commercial areas, it is divided into three zones that are shown on the zoning map:

C-1	Route 1 commercial zone.
C-2	Route 236 commercial zone.
C-3	Bypass/Old Post Road commercial zone.

Where the standards or requirements for the zones vary, the provisions for the zone in which the parcel is located apply.

**B. Permitted Uses.**

**1. C-1 Permitted Uses.**

- a. Public open space recreational uses, recreational facilities, and selected commercial recreation;
- b. School (including nursery school), hospital, long-term nursing care facility, convalescent care facility, municipal or state building or use, church; or any other institution of educational, religious, philanthropic, fraternal, political, or social nature;
- c. Accessory uses and buildings including minor or major home occupations;
- d. Business and professional offices;
- e. Mass transit station;
- f. Commercial parking lot or parking garage;
- g. Retail uses and wholesale businesses excluding used car lots and junkyards;
- h. Service establishments;
- i. Public utility facilities including substations, pumping stations, and sewage treatment facilities;
- j. Restaurant;
- k. Veterinary hospital;
- l. Motel, hotel, rooming house, inn;
- m. Art studio/gallery;
- n. Grocery, food store, convenience store;
- o. Day care facility;
- p. Business service;
- q. Personal service;
- r. Building materials and garden supply;
- s. Conference center;
- t. Repair services; and
- u. Accessory dwelling unit; and
- v. Specialty food and/or beverage facility.

**2. C-2 Permitted Uses.**

- a. Public open space recreational uses, recreational facilities, and selected commercial recreation;
- b. School (including nursery school), hospital, long-term nursing care facility, convalescent care facility, municipal or state building or use, church; or any other institution of educational, religious, philanthropic, fraternal, political, or social nature;

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- c. Accessory uses and buildings including minor or major home occupations;
- d. Business and professional offices;
- e. Mass transit station;
- f. Commercial parking lot or parking garage;
- g. Retail uses and wholesale businesses excluding used car lots and junkyards;
- h. Service establishments;
- i. Public utility facilities including substations, pumping stations, and sewage treatment facilities;
- j. Restaurant;
- k. Veterinary hospital;
- l. Motel, hotel, rooming house, inn;
- m. Art studio/gallery;
- n. Grocery, food store, convenience store;
- o. Day care facility;
- p. Business service;
- q. Personal service;
- r. Building materials and garden supply;
- s. Conference center;
- t. Repair services;
- u. New motor vehicle sales;
- v. Boat yard;
- w. Mechanical services, excluding junkyard;
- x. Commercial boating and fishing uses and facilities, provided only incidental cleaning and cooking of seafood occur at the site; and
- y. Aquaculture;
- z. Accessory dwelling unit; and
- aa. Specialty food and/or beverage facility.

### **3. C-3 Permitted Uses.**

- a. Public open space recreational uses, recreational facilities, and selected commercial recreation;
- b. School (including nursery school), hospital, eldercare facility, long-term nursing care facility, convalescent care facility, municipal or state building or use, church; or any other institution of educational, religious, philanthropic, fraternal, political, or social nature;
- c. Accessory uses and buildings including minor or major home occupations;
- d. Business and professional offices;
- e. Mass transit station;
- f. Commercial parking lot or parking garage;
- g. Retail uses and wholesale businesses excluding used car lots and junkyards;
- h. Service establishments;
- i. Public utility facilities including substations, pumping stations, and sewage treatment facilities;
- j. Restaurant;
- k. Veterinary hospital;
- l. Motel, hotel, rooming house, inn;
- m. Art studio/gallery;
- n. Grocery, food store, convenience store;
- o. Day care facility;
- p. Business service;
- q. Personal service;
- r. Building materials and garden supply;

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(With amendments Ordained 9/26/11; 1/23/12; 5/30/12; 9/24/12; 3/25/13; 6/10/13; 1/27/14)

- s. Conference center;
- t. Repair services;
- u. New motor vehicle sales;
- v. Boat yard;
- w. Mechanical services, excluding junkyard;
- x. Commercial boating and fishing uses and facilities, provided only incidental cleaning and cooking of seafood occur at the site;
- y. Aquaculture;
- z. Accessory dwelling unit; and
- aa. Specialty food and/or beverage facility.

### **C. Special Exception Uses.**

#### **1. C-1 Special Exception Uses.**

- a. Used car lot not connected with new car sales;
- b. Gasoline sales: (i) not located within one thousand (1,000) feet of an existing station or private residence, and (ii) not located within one hundred fifty (150) feet of an existing structure;
- c. Funeral home;
- d. Place of assembly, including theater;
- e. Transportation terminal excluding truck stops;
- f. Warehousing and storage;
- g. Mini storage;
- h. Research and development;
- i. Manufacturing operations that conform to the provisions of Section 16.1.3.2.2 and Chapters 16.8 and 16.9;
- j. Repair garages not located within one hundred fifty (150) feet of a private dwelling or existing structure;
- k. Buildings and structures over forty (40) feet that conform to the provisions of Chapters 16.8 and 16.9. Buildings and structures higher than forty (40) actual feet from the lowest point of grade to the highest point of the building or structure must have side, rear and front yards of sufficient depth to adequately protect the health, safety and welfare of abutting properties, and which may not be less than current standards or
- l. Temporary, intra-family dwelling unit;
- m. New motor vehicle sales;
- n. Mechanical services, excluding junkyard; and
- o. Aquaculture.

#### **2. C-2 Special Exception Uses.**

- a. Used car lot not connected with new car sales;
- b. Gasoline sales: (i) not located within one thousand (1,000) feet of an existing station or private residence, and (ii) not located within one hundred fifty (150) feet of an existing structure;
- c. Funeral home;
- d. Place of assembly, including theater;
- e. Transportation terminal excluding truck stops;
- f. Warehousing and storage;
- g. Mini storage;
- h. Research and development;
- i. Manufacturing operations that conform to the provisions of Section 16.1.3.2.2 and Chapters 16.8 and 16.9;
- j. Repair garages not located within one hundred fifty (150) feet of a private dwelling or existing structure;

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k. Buildings and structures over forty (40) feet that conform to the provisions of Chapters 16.8 and 16.9. Buildings and structures higher than forty (40) actual feet from the lowest point of grade to the highest point of the building or structure must have side, rear and front yards of sufficient depth to adequately protect the health, safety, and welfare of abutting properties, and which may not be less than current standards or fifty percent (50%) of actual height, whichever is greater;

l. Temporary, intra-family dwelling unit;

m. Commercial greenhouses;

n. Adult entertainment establishment not located within one thousand (1,000) feet of an existing private residence, school or place of worship;

o. Shops in pursuit of trade; and

p. Construction services.

### 3. C-3 Special Exception Uses.

a. Used car lot not connected with new car sales;

b. Gasoline sales if not located within:

(i) one thousand (1,000) feet of an existing station or private residence, and

(ii) one hundred fifty (150) feet of an existing structure;

(iii) Manufacturing operations that conform to the provisions of Section 16.1.3.2.2 and Chapters 16.8 and 16.9

c. Funeral home;

d. Place of assembly, including theater;

e. Transportation terminal excluding truck stops;

f. Warehousing and storage;

g. Mini storage;

h. Research and development;

i. Manufacturing operations that conform to the provisions of Section 16.1.3.2.2 and Chapters 16.8 and 16.9

j. Repair garages not located within one hundred fifty (150) feet of a private dwelling or existing structure;

k. Buildings and structures over forty (40) feet that conform to the provisions of Chapters 16.8 and 16.9. Buildings and structures higher than forty (40) actual feet from the lowest point of grade to the highest point of the building or structure must have side, rear and front yards of sufficient depth to adequately protect the health, safety and welfare of abutting properties, and which may not be less than current standards or

l. Temporary, intra-family dwelling unit;

m. Commercial greenhouses;

n. Adult entertainment establishment not located within one thousand (1,000) feet of an existing private residence, school or place of worship;

o. Shops in pursuit of trade; and

p. Construction services.

### D. Standards.

1. C Zone Standards. All development and the use of land in the C zone must meet the following standards. Kittery's Design Handbook illustrates how these standards can be met. In addition, the design and performance standards of Chapters 16.8 and 16.9 must be met.

2. The following space standards apply in the C-1, C-2, and C-3 zones:

Minimum lot size

40,000 square feet

Minimum street frontage

150 feet

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Minimum front yard	50 feet
Minimum rear and side yards	30 feet*
*Except as may be required by the buffer provisions of this Code, and where the side and/or rear yards of the proposed nonresidential use abut a residential zone or use, in which case a minimum of forty (40) feet is required.	
Maximum building height	40 feet
Maximum building and outdoor stored material coverage	40 percent
Minimum setback from water body and wetland water dependent uses	0 feet
Minimum setback from streams, water bodies and wetlands	in accordance with Table 16.9, Section 16.3.2.17 and Appendix A, Fee.

### 3. C-1 Zone Standards.

All development and the use of land within the C-1 zone must meet the following standards:

#### a. Parking.

All new or revised parking must be visually screened by landscaping, earthen berms, and/or fencing from adjacent public streets or residential properties (See the Design Handbook for appropriate examples).

(Ordained 9/26/11; effective 10/27/11)

#### b. Building Design Standards.

Kittery's characteristic buildings reflect its historic seacoast past. The primary architectural styles are New England Colonial (such as Cape Cod and saltbox), Georgian, Federal, and Classical Revival. New buildings must be compatible with Kittery's characteristic styles in form, scale, material, and color. In general, buildings should be oriented to the street with the front of the building facing the street. The front or street facade must be designed as the front of the building. The front elevation must contain one or more of the following elements: (1) a "front door" although other provisions for access to the building may be provided, (2) windows, or (3) display cases (See Design Handbook for examples of acceptable materials and designs). Strict imitation is not required. Design techniques can be used to maintain compatibility with characteristic styles and still leave enough flexibility for architectural variety. To achieve this purpose, the following design standards apply to new and modified existing building projects:

##### i. Exterior Building Materials and Details.

Building materials and details strongly define a project's architectural style and overall character (See Design Handbook for examples of acceptable materials, building scale, and designs). "One-sided" schemes are prohibited; similar materials and details must be used on all sides of a building to achieve continuity and completeness of design. Predominant exterior building materials must be of good quality and characteristic of Kittery, such as horizontal wood board siding, vertical wood boards, wood shakes, brick, stone or simulated stone, glass and vinyl, or metal clapboard.

(Ordained 9/26/11; effective 10/27/11)

##### ii. Roofs.

A building's prominent roofs must be pitched a minimum of 4:12 unless demonstrated to the Planning Board's satisfaction that this is not practicable. Acceptable roof styles are gabled, gambrel, and hipped roofs.

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Flat roofs, shed roofs, and roof facades (such as “stuck on” mansards) are not acceptable as prominent roof forms except as provided above. The roof design must screen or camouflage rooftop protrusions to minimize the visual impact of air conditioning units, air handler units, exhaust vents, transformer boxes, and the like (See Design Handbook for examples of appropriate treatments).

iii. Loading Docks and Overhead Doors. Loading docks and overhead doors must be located on the side or rear of the building and screened from view from adjacent properties in residential use.

### c. Landscaping/Site Improvements.

To achieve attractive and environmentally sound site design, and appropriate screening of parking areas, in addition to the landscaping standards contained in Chapter 16.8, the following landscaping requirements apply to new and modified existing developments:

(Ordained 9/26/11; effective 10/27/11)

#### i. Landscape Planter Strip.

A vegetated landscape planter strip must be provided a minimum of thirty (30) feet in depth adjacent to the right-of-way of all public roads and include the following landscape elements:

(A) Ground Cover. The entire landscape planter strip must be vegetated except for approved driveways, walkways, bikeways, and screened utility equipment.

(B) Streetside Trees. A minimum of one street tree must be planted for each twenty-five (25) feet of street frontage. The trees may be spaced along the frontage or grouped or clustered to enhance the visual quality of the site (See Design Handbook for examples). The trees must be a minimum 2.5 inch caliper, and be at least twelve (12) feet high at the time of planting. The species should be selected from the list of recommended street trees in the Design Handbook. Existing large healthy trees must be preserved if practical and will count toward this requirement.

(C) Planter Strip. Shrubs and flowering perennials must be planted at a minimum of ten (10) plants per forty (40) linear feet of street frontage unless existing woodlands are being retained or such planting is inconsistent with the retention of rural landscape features. The plant material should be selected from the list of recommended materials in the Design Handbook. The plants must be placed within the planter strip to enhance the visual character of the site and augment natural features and vegetation (See Design Handbook for examples of appropriate treatments).

#### (D) Special Situations.

(1) Expansions of less than two thousand (2,000) square feet to existing uses are exempt from the landscaping standard of this subsection.

(2) Depth of Landscape Planter Strip. In instances where the required minimum depth of the landscape planter strip is legally utilized, in accordance with previous permits or approvals, for parking, display, storage, building, or necessary vehicle circulation, the depth may be narrowed by the Planning Board to the minimum extent necessary to achieve the objective of the proposed project, provided the required shrubs and perennials are planted along the street frontage to soften the appearance of the development from the public street. If providing the required landscape planter strip together with other required landscaping and required vegetated areas in and around wetlands would cause the project to exceed the required open space

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standards, the depth of the landscape planter strip and the front yard may be reduced by the Planning Board so the open space standards are not exceeded, but in no case to less than twenty (20) feet for this reason. (Ordained 9/26/11; effective 10/27/11)

(3) Additions and Changes in Use. For additions to existing buildings and changes of residential structures to a nonresidential use, one streetside tree (See list of recommended street trees in Design Handbook) is required to be planted for every one thousand (1,000) square feet of additional gross floor area added or converted to nonresidential use. In instances where parking, display area, storage, building, or necessary vehicle circulation exists at the time of enactment of this Section, the required trees may be clustered and/or relocated away from the road as is necessary to be practicable. The preservation of existing large trees is encouraged; therefore the Planning Board may permit the preservation of existing healthy, large, mature trees within the landscape planter strip or other developed areas of the site to be substituted for the planting of new trees.

(4) Residences. Residential additions to existing single and two-family dwellings and proposed single and duplex family dwellings are exempt from the landscaping standards of this subsection.

### ii. Outdoor Service and Storage Areas.

Service and storage areas must be located to the side or rear of the building. Facilities for waste storage such as dumpsters must be located within an enclosure and be visually buffered by fencing, landscaping, and/or other treatments (See Design Handbook for examples of appropriate buffering).

### d. Traffic and Circulation Standards.

Sidewalks and roadways must be provided within the site to internally join abutting properties that are determined by the Planning Board to be compatible. In addition, safe pedestrian route(s) must be provided to allow pedestrians to move within the site and between the principal customer entrance and the front lot line where a sidewalk exists or will be provided or where the Planning Board determines that such a route is needed for adequate pedestrian safety and movement (See Design Handbook for appropriate examples).

### e. Open Space Standards.

Open space must be provided as a percentage of the total area of the lot, including freshwater wetlands, water bodies, streams, and setbacks. Twenty-five percent (25%) of each lot must be designated as open space. Required open space must be shown on the plan with a note dedicating it as "open space." The open space must be located to create an attractive environment on the site, minimize environmental impacts, protect significant natural features or resources on the site, and maintain wildlife habitat. Individual large, healthy trees and areas with mature tree cover should be included in the open space. Where possible, the open space must be located to allow the creation of continuous open space networks in conjunction with existing or potential open space on adjacent properties. The required amount of designated open space is reduced to fifteen percent (15%) of each lot that is less than one hundred thousand (100,000) square feet in size.

Minimum land area per unit for eldercare facilities  
that are connected to the public sewerage system:

dwelling unit with two or more bedrooms	3,000 square feet
dwelling unit with less than two bedrooms	2,000 square feet
residential care unit	1,500 square feet

Minimum land area per bed for nursing care

and convalescent care facilities  
that are connected to the public sewerage system

1,200 square feet

#### **4. C-2 Zone Standards.**

All development and the use of land within the C-2 zone must meet the following standards:

a. **Parking.**

All new or revised parking must be visually screened through the use of landscaping, earthen berms, and/or fencing from adjacent public streets or residential properties (See the Design Handbook for appropriate examples).

b. **Building Design Standards.**

New buildings should meet the general design principles set forth in the Design Handbook. In general, buildings should be oriented to the street with the front of the building facing the street. The front or street facade must be designed as the front of the building. The front elevation must contain one or more of the following elements: (1) a “front door” although other provisions for access to the building may be provided, (2) windows, or (3) display cases. A building’s prominent roofs must be pitched a minimum of 4:12 unless demonstrated to the Planning Board’s satisfaction that this is not practicable. Acceptable roof styles are gabled, gambrel, and hipped roofs. Flat roofs, shed roofs, and roof facades (such as “stuck on” mansards) are not acceptable as prominent roof forms except as provided above (See Design Handbook for examples of acceptable designs).

c. **Landscaping/Site Improvements.**

To achieve attractive and environmentally sound site design, and appropriate screening of parking areas, in addition to the landscaping standards contained in Chapter 16.8, the following landscaping requirements apply to new and modified existing developments:

i. **Landscape Planter Strip.** A vegetated landscape planter strip must be provided a minimum of twenty (20) feet in depth adjacent to the right-of-way of all public roads and include the following landscape elements:

(A) **Ground Cover.** The entire landscape planter strip must be vegetated except for approved driveways, walkways, bikeways, and screened utility equipment.

(B) **Streetside Trees.** A minimum of one street tree must be planted for each fifty (50) feet of street frontage. The trees may be spaced along the frontage or grouped or clustered to enhance the visual quality of the site (See Design Handbook for examples). The trees must be a minimum 2.5 inch caliper, and be at least twelve (12) feet high at the time of planting. The species should be selected from the list of recommended street trees in the Design Handbook. Existing large healthy trees must be preserved if practical and will count toward this requirement.

(C) **Special Situations.**

(1) Expansions of less than two thousand (2,000) square feet to existing uses are exempt from the landscaping standard of this subsection.

(2) **Depth of Landscape Planter Strip.** In instances where the required minimum depth of the landscape planter strip is legally utilized, in accordance with previous permits or approvals for parking, display, storage,



building, or necessary vehicle circulation, the depth may be narrowed by the Planning Board to the minimum extent necessary to achieve the objective of the proposed project, provided that the required shrubs and perennials are planted along the street frontage to soften the appearance of the development from the public street.

(3) Additions and Changes in Use. For additions to existing buildings and changes of residential structures to a nonresidential use, one streetside tree (See list of recommended street trees in Design Handbook) is required to be planted for every one thousand (1,000) square feet of additional gross floor area added or converted to nonresidential use. In instances where parking, display area, storage, building, or necessary vehicle circulation exists at the time of enactment of this Section, the required trees may be clustered and/or relocated away from the road as is necessary to be practicable. The preservation of existing large trees is encouraged; therefore the Planning Board may permit the preservation of existing healthy, large, mature trees within the landscape planter strip or other developed areas of the site to be substituted for the planting of new trees.

(4) Residences. Residential additions to existing single and two-family dwellings and proposed single and duplex family dwellings are exempt from the landscaping standards of this subsection.

ii. Outdoor Service and Storage Areas. No areas for the storage of raw materials, equipment, or finished products other than small areas for the display of samples of products available for sale or rent may be located between the front property line and the front facade of the building. Display areas may not be located within the required landscape planter strip. Facilities for waste storage such as dumpsters must be located within an enclosure and be visually buffered by fencing, landscaping, and/or other treatments (See Design Handbook for examples of appropriate buffering).

d. Traffic and Circulation Standards.

Vehicular and pedestrian circulation must meet the general provisions of the Design Handbook.

### **5. C-3 Zone Standards.**

All development and the use of land within the C-3 zone must meet the following standards:

a. Parking.

All new or revised parking must be visually screened through the use of landscaping, earthen berms, and/or fencing from adjacent public streets or residential properties (See the Design Handbook for appropriate examples).

b. Building Design

Kittery's characteristic buildings reflect its historical seacoast past. The primary architectural styles are New England Colonial (such as Cape Cod and saltbox), Georgian, Federal, and Classical Revival. New buildings must be compatible with Kittery's characteristic styles in form, scale, material, and color. In general, buildings should be oriented to the street with the front of the building facing the street. The front or street facade must be designed as the front of the building. The front elevation must contain one or more of the following elements: (1) a "front door" although other provisions for access to the building may be provided, (2) windows, or (3) display cases (See Design Handbook for examples of acceptable materials and designs). Strict imitation is not required. Design techniques can be used to maintain compatibility with characteristic styles and still leave enough flexibility for architectural variety. To achieve this purpose, the following design standards apply to new and remodeled building projects:

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### i. Exterior Building Materials and Details.

Building materials and details strongly define a project's architectural style and overall character (See Design Handbook for examples of acceptable materials, building scale, and designs). "One-sided" schemes are prohibited; similar materials and details must be used on all sides of a building to achieve continuity and completeness of design. Predominant exterior building materials must be of good quality and characteristic of Kittery, such as horizontal wood board siding, vertical wood boards, wood shakes, brick, stone or simulated stone, glass and vinyl, or metal clapboard.

### ii. Roofs.

A building's prominent roofs must be pitched a minimum of 4:12 unless demonstrated to the Planning Board's satisfaction that this is not practicable. Acceptable roof styles are gabled, gambrel, and hipped roofs. Flat roofs, shed roofs, and roof facades (such as "stuck on" mansards) are not acceptable as prominent roof forms except as provided above. The roof design must screen or camouflage rooftop protrusions to minimize the visual impact of air conditioning units, air handler units, exhaust vents, transformer boxes, and the like (See Design Handbook for examples of appropriate treatments).

iii. Loading Docks and Overhead Doors. Loading docks and overhead doors must be located on the side or rear of the building and screened from view from adjacent properties in residential use.

### c. Landscaping/ Site Improvements.

To achieve attractive and environmentally sound site design, and appropriate screening of parking areas, in addition to the landscaping standards contained in Chapter 16.8, the following landscaping requirements apply to new and modified existing developments:

#### i. Landscape Planter Strip.

A vegetated landscape planter strip must be provided a minimum of fifteen (15) feet in depth adjacent to the right-of-way of all public roads and include the following landscape elements:

(A) Ground Cover. The entire landscape planter strip must be vegetated except for approved driveways, walkways, bikeways, and screened utility equipment.

(B) Streetside Trees. A minimum of one street tree must be planted for each fifty (50) feet of street frontage. The trees may be spaced along the frontage or grouped or clustered to enhance the visual quality of the site (See Design Handbook for examples). The trees must be a minimum 2.5 inch caliper, and be at least twelve (12) feet high at the time of planting. The species should be selected from the list of recommended street trees in the Town Design Handbook. Existing large healthy trees must be preserved if practical and will count toward this requirement.

#### (C) Special Situations.

(1) Expansions of less than one thousand (1,000) square feet to existing uses are exempt from the landscaping standard of this subsection.

(2) Depth of Landscape Planter Strip. In instances where the required minimum depth of the landscape planter strip is legally utilized, in accordance with previous permits or approvals, for parking, display, storage, building, or necessary vehicle circulation, the depth may be narrowed by the Planning Board to the minimum extent necessary to achieve the objective of the proposed project, provided that the required shrubs and perennials are planted along the street frontage to soften the appearance of the development from the public street.

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(3) Additions and Changes in Use. For additions to existing buildings and changes of residential structures to a nonresidential use, one streetside tree (See list of recommended street trees in Design Handbook) is required to be planted for every one thousand (1,000) square feet of additional gross floor area added or converted to nonresidential use. In instances where parking, display area, storage, building, or necessary vehicle circulation exists at the time of enactment of this Section, the required trees may be clustered and/or relocated away from the road as is necessary to be practicable. The preservation of existing large trees is encouraged; therefore the Planning Board may permit the preservation of existing healthy, large, mature trees within the landscape planter strip or other developed areas of the site to be substituted for the planting of new trees.

### ii. Outdoor Service and Storage Areas.

Service and storage areas must be located to the side or rear of the building. Facilities for waste storage such as dumpsters must be located within an enclosure and be visually buffered by fencing, landscaping, and/or other treatments (See Design Handbook for examples of appropriate buffering).

### d. Traffic and Circulation Standards.

Sidewalks and roadways must be provided within the site to internally join abutting properties that are determined by the Planning Board to be compatible. In addition, safe pedestrian route(s) must be provided to allow pedestrians to move within the site and between the principal customer entrance and the front lot line where a sidewalk exists or will be provided or where the Planning Board determines that such a route is needed for adequate pedestrian safety and movement (See Design Handbook for appropriate examples).

### e. Open Space Standards.

Open space must be provided as a percentage of the total area of the lot, including freshwater wetlands, water bodies, streams, and setbacks. Twenty percent (20%) of each lot must be designated as open space. Required open space must be shown on the plan with a note dedicating it as “open space.” The open space must be located to create an attractive environment on the site, minimize environmental impacts, protect significant natural features or resources on the site, and maintain wildlife habitat. Individual large, healthy trees and areas with mature tree cover should be included in the open space. Where possible, the open space must be located to allow the creation of continuous open space networks in conjunction with existing or potential open space on adjacent properties. The required amount of designated open space is reduced to ten percent (10%) of each lot that is less than forty thousand (40,000) square feet in size.

**16.3.2.12 Industrial IND.**

**A. Purpose.**

To provide areas within the Town for manufacturing, processing, treatment and research, and to which end all the performance standards set forth in this title apply.

**B. Permitted Uses.**

1. Manufacturing, processing and treatment;
2. Research facilities;
3. Accessory uses and buildings including minor or major home occupations; and
4. Specialty food and/or beverage facility.

**C. Special Exception Uses.**

1. Municipal and governmental uses;
2. Public utility facilities including substations, pumping stations, and sewage treatment plants; and
3. Temporary, intra-family dwelling unit.

**D. Standards.**

1. The design and performance standards of Chapters 16.8 and 16.9 must be met.
2. The following space standards apply:

Minimum area of lot	None
Minimum street frontage	None
Minimum front yard	None
Minimum rear and side yards	30 feet*

\*Except as may be required by the buffer provisions of this Code, and except where the side and/or rear yards abut a residential zone or use, in which case a minimum of 50 feet or 50 percent of the building or outdoor stored material height, whichever is greater, is required.

Maximum building height	None
Maximum building coverage	None

Minimum setback from water body and wetland water dependent uses	0 feet
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Minimum setback from streams, water bodies and wetlands	in accordance with Table 16.9, Section 16.3.2.17 and Appendix A, Fee.
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**Note:** It is recognized that federal ownership of this zone at the time of enactment of the ordinance codified in this title precludes enforcement of any local regulations.

### **16.3.2.13 Mixed Use MU.**

#### **A. Purpose.**

To provide opportunities for a mix of office, service, and limited residential and retail uses, to alter the pattern of commercial activity on Route 1, to serve Kittery's needs, and to minimize traffic congestion. A mix of uses on a site is desired and in some cases, required; a continuation of strip development is not encouraged in this zone. The mixed use zone is intended to accommodate growth.

The purpose of large lot sizes, open space standards, and frontage requirements is to limit the number of access points along U.S. Route 1, to encourage the development of service roads which may serve several developments, and to create development that will retain the predominant rural character of the zone. Other objectives are to encourage an orderly and safe traffic flow along U.S. Route 1, pedestrian safety, and an attractive site design enhanced by landscaping, open space, and restrictions on the locations of parking.

#### **B. Permitted Uses.**

1. Agricultural uses and practices, except a piggery or the raising of poultry for commercial purposes;
2. Art studio/gallery;
3. Boat yard;
4. Building materials and garden supplies;
5. Business and professional offices;
6. Church or institution of religion;
7. Commercial parking lot or garage;
8. Day care facility;
9. Dwellings, limited to the following:
  - a. Single-family dwellings on lots of record as of April 1, 2004,
  - b. Dwelling units on the upper floors of a mixed-use building that is served by public sewerage;
10. Funeral home;
11. Grocery store, food store, convenience store or neighborhood grocery;
12. Hospital;
13. Inn;
14. Institution of education, which is not used for residential or overnight occupancy;
15. Mass transit station;
16. Municipal or state building or use;
17. Convalescent care facility, long-term nursing care facility;
18. Institution of philanthropic, fraternal, political, or social nature, which is not used for residential or overnight occupancy;
19. Personal services;
20. Public open space or recreation;
21. Restaurant;
22. Research and development;
23. Repair service;
24. Retail use, a single use not to exceed fifty thousand (50,000) square feet in gross floor area;
25. Selected commercial recreation;
26. Theater;
27. Timber harvesting;
28. Veterinary hospital;
29. Accessory buildings and uses including minor or major home occupations;
30. Eldercare facility;

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31. Accessory dwelling units; and
32. Specialty food and/or beverage facility.

### **C. Special Exception Uses.**

1. Campground or trailer park;
2. Commercial kennel;
3. Commercial greenhouses;
4. Drive-in theater;
5. Gas service station;
6. Housing for elderly as part of a mixed use project;
7. Industry, light;
8. Mechanical service;
9. Motel or hotel;
10. New motor vehicle sales;
11. Public utility facilities including substations, pumping stations, and sewage treatment facilities;
12. Repair garage;
13. A single retail use greater than fifty thousand (50,000) square feet in gross floor area and less than one hundred fifty thousand (150,000) square feet in gross floor area;
14. Shop in pursuit of trades;
15. Transportation terminal;
16. Warehousing/storage;
17. Wholesale business; and
18. Construction services.

### **D. Standards.**

1. All development and the use of land in the MU zone must meet the following standards. Kittery's Design Handbook illustrates how these standards can be met. In addition, the design and performance standards of Chapters 16.8 and 16.9 must be met.

#### 2. Minimum Dimensional Standards.

The following apply:

##### Minimum lot size:

lots with frontage on Route 1	200,000 square feet
lots without frontage on Route 1	80,000 square feet

##### Minimum street frontage on road with access along

U.S. Route 1, Haley Road, Lewis Road, or Cutts Road	250 feet
other streets or approved ways	150 feet

Minimum front yard	60 feet
Minimum rear and side yards	30 feet
Maximum building height	40 feet
Maximum height above grade of building-mounted signs	40 feet

Minimum setback from water body and wetland water dependent uses	0 feet
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Minimum setback from streams, water bodies and wetlands	in accordance with
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Table 16.9, Section  
16.3.2.17 and Appendix A,  
Fee

Minimum land area per unit for eldercare facilities that are connected to the public sewerage system:

dwelling unit with two or more bedrooms	5,000 square feet
dwelling unit with less than two bedrooms	4,000 square feet
residential care unit	2,500 square feet

Minimum land area per bed for nursing care and convalescent  
care facilities that are connected to the public sewerage system

2,000 square feet

Buffer to I-95 ROW

40 feet

Buffer to neighboring lot with an existing residence  
within 100 feet of the lot line

40 feet

Vegetated buffer to be maintained between the MU and R-RL zones

40 feet

**NOTE 1:** For single-family dwellings, one dwelling unit is allowed for each two hundred thousand (200,000) square feet of land area. A lot of record having a land area of more than two hundred thousand (200,000) square feet that was improved with a single-family dwelling as of April 1, 2004 may be divided into two lots with a single-family dwelling on each lot provided that each of the lots contains at least forty thousand (40,000) square feet of land area and meets the other dimensional standards of the zone. Sections 16.3.2.1 D.1 and D.2 as set forth in the Residential - Rural zone apply and no further subdivision is allowed.

**NOTE 2:** For dwelling units that are part of a mixed-use building and are connected to the public sewerage system, one dwelling unit is allowed for each twenty thousand (20,000) square feet of buildable land area. If the parking for the residential units is integrated into the building, the minimum required buildable land area per dwelling unit is reduced to fifteen thousand (15,000) square feet.

**NOTE 3:** For elderly housing dwelling units that are connected to the public sewerage system, one dwelling unit is allowed for each fifteen thousand (15,000) square feet of buildable land area. If the parking for the elderly units is integrated into the building, the minimum required buildable land area per dwelling unit is reduced to ten thousand (10,000) square feet.

### 3. Retail Use Limitation.

Retail use, including parking areas and other supporting unvegetated areas for retail use, is limited to not more than fifteen percent (15%) of the developable area of any lot or portion of a lot within the mixed use zone.

### 4. Location and Screening of Parking Areas.

All new parking areas must be located at the side of, and/or to the rear of, principal buildings, except that ten (10) or fewer parking spaces may be located closer to the front lot line than a principal building. All new or revised parking must be visually screened from U.S. Route 1, Lewis Road, Cutts Road, and Haley Road by extensive landscaping, earthen berms, and/or fencing (See Design Handbook for examples of acceptable screening).

### 5. Building Design Standards.

Kittery's characteristic buildings reflect its historic seacoast past. The primary architectural styles are New England Colonial (such as Cape Cod and saltbox), Georgian, Federal, and Classical Revival. New buildings

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should be compatible with Kittery's characteristic styles in form, scale, material, and color. In general, buildings should be oriented to the street with the front of the building facing the street. The front or street facade must be designed as the front of the building. The front elevation must contain one or more of the following elements: (1) a front door" although other provisions for access to the building may be provided, (2) windows, or (3) display cases (See Design Handbook for examples of acceptable materials and designs). Strict imitation is not required. Design techniques can be used to maintain compatibility with characteristic styles and still leave enough flexibility for architectural variety. To achieve this purpose, the following design standards apply to new and remodeled building projects:

### a. Exterior Building Materials and Details.

Building materials and details strongly define a project's architectural style and overall character (See Design Handbook for examples of acceptable materials, building scale, and designs). "One-sided" schemes are prohibited; similar materials and details must be used on all sides of a building to achieve continuity and completeness of design.

#### i. Predominant Exterior Building Materials.

Predominant exterior building materials must be of good quality and characteristic of Kittery, such as horizontal wood Board siding, vertical wood Boards, wood shakes, brick, stone or simulated stone, glass and vinyl, or metal clapboard. Stucco, adobe, sheet metal, standard concrete block, tilt-up concrete panels, plywood or particle Board are prohibited as the primary materials.

#### ii. Blank Walls.

A wall may not extend for a length of more than fifty (50) linear feet without an architectural feature such as a dormer, pilaster, cornice, corner, window, porch, or visually compatible door to break up the large mass of a featureless wall (See Design Handbook for examples of the appropriate treatment of walls). As an exception, walls with a clapboard facade may extend for a length of up to one hundred (100) feet without such an architectural feature.

#### iii. Light Industrial and Boatyard Uses.

Such uses must comply with the above standards only along the front face and extending back one hundred (100) feet along the side walls.

### b. Roofs. Roofs must meet the following standards:

#### i. Form.

A building's prominent roofs must be pitched a minimum of 4:12 unless demonstrated to the Planning Board's satisfaction that this is not practicable. Acceptable roof styles are gabled, gambrel, and hipped roofs. Flat roofs, shed roofs, and roof facades (such as "stuck on" mansards) are not acceptable as primary roof forms.

#### ii. Color.

Roof colors must be muted (See Design Handbook for examples).

#### iii. Rooftop Mechanical and Electrical Equipment.

Rooftops must be free of clutter. The roof design must screen or camouflage rooftop protrusions to minimize the visual impact of air conditioning units, air handler units, exhaust vents, transformer boxes, and the like (See Design Handbook for examples of appropriate treatments). Interior-mounted equipment is encouraged. Whenever possible, utility equipment areas must be placed in an obscure location and screened from view.



iv. Loading Docks and Overhead Doors.

Loading docks and overhead doors must be located on the side or rear of the building and be screened from view from public streets.

6. Landscaping Standards.

To achieve attractive and environmentally sound site design, and appropriate screening of parking areas, in addition to the landscaping standards contained in Chapter 16.8 and 16.9, the following landscaping requirements apply to new and modified existing developments:

a. Landscape Planter Strip. A vegetated landscape planter strip must be provided a minimum of thirty (30) feet wide, a maximum of seventy (70) feet wide, and an average of fifty (50) feet in width adjacent to the right-of-way of U.S. Route 1, Cutts Road, Haley Road, and Lewis Road, and thirty (30) feet in depth adjacent to all other roads and include the following landscape elements:

i. Ground Cover. The entire landscape planter strip must be vegetated except for approved driveways, walkways, bikeways, and screened utility equipment.

ii. Streetside Trees. A minimum of one street tree must be planted for each twenty-five (25) feet of street frontage. The trees may be spaced along the frontage or grouped or clustered to enhance the visual quality of the site (See Design Handbook for examples). The trees must be a minimum 2.5 inch caliper, and be at least twelve (12) feet high at the time of planting. The species should be selected from the list of approved street trees in the Design Handbook. Existing large healthy trees must be preserved if practical and will count toward this requirement.

iii. Planter Strip. Shrubs and flowering perennials must be planted at a minimum of ten (10) plants per forty (40) linear feet of street frontage unless existing woodlands are being retained or such planting is inconsistent with the retention of rural landscape features. The plant material should be selected from the list of approved materials in the Design Handbook. The plants must be placed within the planter strip to enhance the visual character of the site and augment natural features and vegetation (See Design Handbook for examples of appropriate treatments).

iv. Special Situations.

(A) Expansions of less than five hundred (500) square feet to existing uses are exempt from the landscaping standard of this subsection.

(B) Depth of Landscape Planter Strip. In instances where the required average depth of the landscape planter strip is legally utilized, in accordance with previous permits or approval, for parking, display, storage, building, or necessary vehicle circulation, the depth may be narrowed by the Planning Board to the minimum extent necessary to achieve the objective of the proposed project, provided that the required shrubs and perennials are planted along the street frontage to soften the appearance of the development from the public street.

If providing the required landscape planter strip along with other required landscaping and required vegetated areas in and around wetlands would cause the project to exceed the required open space standards, the depth of the landscape planter strip and the front yard may be reduced by the Planning Board

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so that the open space standards are not exceeded, but in no case to less than twenty (20) feet for this reason.

(C) Additions and Changes in Use. For additions to existing buildings and changes of residential structures to a nonresidential use, one streetside tree (See list of recommended street trees in Design Handbook) is required for every five hundred (500) square feet of additional gross floor area added or converted to nonresidential use. In instances where parking, display area, storage, building or necessary vehicle circulation exists at the time of enactment of this Section, the required trees may be clustered and/or relocated away from the road as is necessary to be practicable. The preservation of existing large trees is encouraged; therefore the Planning Board may permit the preservation of existing healthy, large, mature trees within the landscape planter strip or other developed areas of the site to be substituted for the planting of new trees.

(D) Residences. Residential additions to existing single and two-family dwellings and proposed single and duplex family dwellings are exempt from the landscaping standards of this subsection.

b. Buffer Area. Where buffering is required, it must provide a year-round visual screen to minimize adverse impacts and screen new development (See Design Guidelines for examples of appropriate buffers for various situations), and may consist of fencing, evergreens, retention of existing vegetation, berms, rocks, boulders, mounds or combinations thereof. Within three growing seasons, the buffer must provide a year-round screen at least eight feet in height or such lower height as determined by the Planning Board to be appropriate for the situation. Buffer areas must be maintained and kept free of all outdoor storage, debris, and rubbish. The width of the buffer area may be reduced by the Planning Board if the function of the buffer is still fulfilled.

c. Rural Landscape Features. Rural landscape features such as stonewalls, berms, and other agricultural structures, and tree lines or fields must be retained to the maximum extent practicable.

d. Lighting. Outdoor lighting must provide the minimum illumination needed for the safe use of the site while enhancing the nighttime visual character of the site. Lighting must conform to the standards for outdoor lighting in Chapter 16.8.

e. Outdoor Service and Storage Areas. Service and storage areas must be located to the side or rear of the building. Facilities for waste storage such as dumpsters must be located within an enclosure and be visually buffered by fencing, landscaping, and/or other treatments (See Design Handbook for examples of appropriate buffering).

### 7. Traffic and Circulation Standards.

Sidewalks and roadways must be provided within the site to internally join abutting properties that are determined by the Planning Board to be compatible. In addition, safe pedestrian route(s) must be provided to allow pedestrians to move within the site and between the principal customer entrance and the front lot line where a sidewalk exists or will be provided or where the Planning Board determines that such a route is needed for adequate pedestrian safety and movement (See Design Handbook for appropriate examples).

### 8. Open Space Standards.

Open space must be provided as a percentage of the total area of the lot, including freshwater wetlands, water bodies, streams, and setbacks. Thirty-five percent (35%) of each lot must be designated as open space. Required open space must be shown on the plan with a note dedicating it as "open space."

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a. An objective of the open space standard is to encourage the integration of open space throughout the entire development and with the open space on adjoining properties in order to alter the pattern of commercial activity along Route 1. To this end, a minimum of twenty-five percent (25%) of the required open space must be located in the front fifty percent (50%) of the lot area closest to U.S. Route 1, or if not fronting Route 1, closest to the public street used to enter the lot.

b. The open space must be located to create an attractive environment on the site, minimize environmental impacts, protect significant natural features or resources on the site, and maintain wildlife habitat. Where possible, the open space must be located to allow the creation of continuous open space networks in conjunction with existing or potential open space on adjacent properties.

### c. Special Situations

#### i. Cases Where Integrating Open Space Would Require Exceeding the Open Space Standards.

In cases where the topography, wetlands, and existing development on the lot dictates that more than seventy-five percent (75%) of the required open space be located outside the front portion of the lot, a percentage of the open space normally required in the front portion of the lot may be shifted to the rear portion of the lot in order to achieve the required amount of vegetated open space and not reduce the allowable developable area on the lot, provided minimum landscaping standards are satisfied.

#### ii. Small Lots.

The required amount of designated open space is reduced to twenty percent (20%) of each lot that is less than one hundred thousand (100,000) square feet in size.

### 9. Mixed Use Requirement.

The mixed use zone is intended for the creation of an area in the Town that has a mix of uses and in which no single type of use predominates. To this end, larger scale projects must incorporate a mix of principal uses into the development. Any new development that creates more than twenty thousand (20,000) square feet of gross floor area must include at least two principal uses as set forth in the list of permitted uses and special exceptions. To fulfill this requirement, the smaller use or combination of smaller uses must contain at least ten percent (10%) of the gross floor area. The combination of retail uses that are permitted uses and one larger retail use allowed as a special exception does not fulfill this requirement. This provision does not apply to the development of lots of record as of April 1, 2004 that have a lot area of less than two hundred thousand (200,000) square feet.

### 10. Conditions for Approving Special Exception Uses in the Mixed Use Zone.

A. A single retail use greater than fifty thousand (50,000) square feet in gross floor area and less than one hundred fifty thousand (150,000) square feet in gross floor area:

1. Timing. No more than one retail use with a gross floor area greater than fifty thousand (50,000) square feet and less than one hundred fifty thousand (150,000) square feet may be approved in any three-year period.

2. Size. A single retail use with a gross floor area greater than one hundred fifty thousand (150,000) square feet is not permitted.

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### B. Gasoline Service Stations.

1. Visual Screening. A year-round buffer area must be provided between the gasoline service station and neighboring uses in accordance with the landscaping standards of the mixed use zone regulations.
2. Separation Distance. A gasoline service station may not be located within two thousand (2,000) feet of another service station.
3. Minimum Distance—Pump to Existing Structures. A fuel pump may not be located closer than one hundred fifty (150) feet to an existing occupied structure located off the site of the gasoline service station.

### C. Drive-in Theater.

1. To protect the tranquility and quality of life of existing residential uses in the vicinity of the proposed drive-in theater, the hours of operation must be limited to the degree necessary and/or adequate visual and sound buffers must be established.

### D. Campground/Trailer Park.

1. The standards in Article XII of Chapter 16.8 must be satisfied.
2. Occupation of any site by single user for a period exceeding ninety-six (96) hours is prohibited.
3. Quiet hours must be enforced between 10:00 p.m. and 7:00 a.m.

### E. Motel or Hotel.

1. Multiple-story structures are encouraged.
2. Wherever practicable, building orientation should not be parallel to U.S. Route 1, but must take maximum advantage of the depth of the mixed use zone.
3. More than three separate motels and/or hotels may not be permitted in the mixed use zone.

### F. Mineral/Earth Material Extraction.

The standards for mineral/earth material exploration and removal in Section 16.8.1.2 must be met.

### G. Public Utility Facilities Including Substation, Pumping Stations, and Sewage Treatment Facilities.

1. Public Health and Safety. Must not endanger the public health or safety;
2. Protect Property Values. Must not unreasonably reduce the value of abutting property without just compensation;
3. Prevent Nuisances. Must prevent the emission of nuisances, such as but not limited to noise, odors, dust, gas, fumes, smoke, light, vibrations, and electrical interference, beyond the boundaries of the site to the maximum extent practicable;

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### H. Compatibility with Neighborhood and Landscape.

Must be visually harmonious with the neighborhood and natural landscape by the use of adequate screening and/or architectural design as follows:

1. Screening. Must be screened and buffered through landscaping, fencing, planted berms, existing vegetation, and separations of spaces to shield neighbors from any adverse external effects of the facility and to integrate the facility into the landscape. Plantings must be of sufficient maturity to achieve the desired screening effect within three years,
2. Architectural Compatibility. Must be in architectural harmony with the area in which it is located to the maximum extent practicable through the appropriate use of facade materials, roof style, scale, bulk, and architectural style and details;
3. Location. Facilities located above ground must be sited so as to eliminate adverse impacts associated with the facility to the maximum extent practicable while still fulfilling the basic purpose of the facility.

### I. Housing for the Elderly.

1. Location Suitability. The location of the site must allow it to be developed so that the residents of the project will be able to function as part of the community and have pedestrian access to services and facilities within the area.
2. Mixed Use. If an elderly housing component is proposed as part of the project, it must be an essential element of the mixed use project and be designed to be an integrated part of the overall development.

### J. Commercial Greenhouses.

1. The greenhouses and any related outdoor storage or service areas or structures must be visually buffered from Route 1 and adjacent properties.
2. If the greenhouses will be internally lit between 9:00 p.m. and 6:00 a.m., the internal lighting may not be visible from adjacent properties including public streets.
3. The noise resulting from the operation of the facility as measured at the property line must be comparable with other uses in the MU zone during the period between 9:00 p.m. and 6:00 a.m.
4. The greenhouses and related storage and service areas may not be located within two hundred (200) feet of any legally existing residential use, inn, motel or hotel, hospital, or nursing home/convalescent center on another lot.

### K. Light Industry, Transportation Terminal, Warehousing/Storage, or Wholesale Business.

1. The building and any related outdoor storage or service areas or structures must be visually buffered from Route 1 and adjacent properties by other uses allowed in the zone and/or by a landscaped buffer strip.
2. If the area between this use and Route 1 is not developed for another permitted use or special exception, it must be maintained as a naturally vegetated buffer in addition to the provision of a landscape planter strip.
3. The noise resulting from the operation of the facility as measured at the property line must be comparable with other uses in the MU zone during the period between 9:00 p.m. and 6:00 a.m.

4. The use and related storage and service areas may not be located within two hundred (200) feet for any legally existing residential use, inn, motel or hotel, hospital, or nursing home/convalescent center on another lot.

**16.3.2.14 Mixed Use - Badgers Island MU - BI.**

**A. Purpose.**

To provide opportunities for a wide variety of uses, including marine-related activities, offices, restaurants, shops, residences and services, to take advantage of a unique island setting located within walking distance to both downtown Portsmouth and downtown Kittery in which water and sewer services are available to support development.

This zone is further intended to develop standards appropriate for existing small lot sizes and street frontages to encourage investment in buildings that will contribute to the revitalization of the greater Kittery Foreside area while balancing business and residential interests to keep property values up and maintain an urban residential quality of life in the zone.

**B. Permitted Uses.**

1. Dwellings, or modular homes, exclusive of mobile homes;
2. Public open space and recreational uses;
3. School, municipal or state building or use, church, or any other institution of educational, religious, philanthropic, fraternal, political or social nature,;
4. Accessory buildings and uses, including home occupations;
5. Day care facility;
6. Retail business and service establishments, but excluding those with any outdoor sales and/or storage;
7. Business and professional offices;
8. Shuttle service and ride sharing facilities;
9. Restaurant with the hours of operation limited to five a.m. to eleven p.m. but excluding restaurants where ordering and/or pickup of food may take place from a motorized vehicle;
10. Art studio/gallery;
11. Grocery store, food store;
12. Personal, business or mechanical service;
13. Inn;
14. Apartment building;
15. Boat yard;
16. Marina;
17. Commercial boating and fishing uses and facilities, provided only incidental cleaning and cooking of seafood occur at the site;
18. Aquaculture;
19. Research laboratories;
20. Conference center;
21. Accessory dwelling units; and
22. Specialty food and/or beverage facility.

**C. Special Exception Uses.**

1. Commercial recreational use;
2. Place of assembly, including theater;

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3. Public utility facilities, including substations, pumping stations, and sewage treatment facilities;

### **D. Standards.**

1. The design and performance standards of Chapters 16.8 and 16.9 must be met except where specifically altered in this subsection.

2. The following space standards apply:

Minimum land area per dwelling unit	3,000 square feet
for each of the first two dwelling units, and thereafter	6,000 square feet

Minimum lot size	6,000 square feet
Minimum street frontage	50 feet
Minimum front yard	5 feet
Minimum rear and side yards	10 feet
Maximum building height	40 feet

Minimum setback from:	
water body and wetland water dependent uses	0 feet
all other uses (including buildings and parking)	75 feet
	unless modified, according to the terms of subsection (E) of this Section.

Minimum open space on the site	40 per cent*
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\*Except the Planning Board may reduce the required open space to 30 percent where it is clearly demonstrated that no practicable alternative exists to accommodate a water-dependent use.

### **E. Appropriate Waterfront Activity Incentives.**

To encourage objectives of the comprehensive plan to (1) provide public access to the waterfront, (2) retain and expand commercial water-dependent uses, and (3) take extraordinary steps to preserve the environmental quality of the shoreline and tidal waters, the required setback from water bodies and wetlands may be reduced to twenty-five (25) feet where the Planning Board finds a development plan significantly contributes to accomplishment of the above objectives by satisfactorily achieving one or more of the following:

1. **Public Access.** Grants an easement to the Town, or other acceptable party, providing public access to the waterfront at no charge to the general public via a developed accessible pedestrian route with appropriate signage or includes an outdoor deck or patio for customer seating at a restaurant open to the general public; or

2. **Retain/Expand Commercial Water-Dependent Uses.** Provides for inclusion of commercial water-dependent use(s) on the property for the duration of the portion of the project that encroaches closer than the normal minimum setback from water bodies and wetlands. Provision of fewer than six boat slips for leisure/recreational boating do not constitute a commercial water-dependent use for the purposes of this Section; or

3. Preserve the Environmental Quality of Coastal Resources. Protect existing wildlife habitat, conserve shore cover and ensure the quality of stormwater runoff by satisfying all of the following standards:

- a. Retain and protect existing significant wildlife habitat that provides food, cover and/or nesting for migratory song birds and wading birds,
- b. In order to conserve shore cover, contiguous areas of shrubberies of varying height, such as dwarf species of barberry, serviceberry, holly, crabapple, dogwood, cotoneaster, euonymus, firethorn and/or rosa rugosa, as well as erosion resistant ground cover plantings must be retained and planted, and existing trees retained, wherever practicable in the setback,
- c. Implementation of a stormwater management plan endorsed by the York County Soil and Water Conservation District (SCS), or the Town's engineering peer review consultant, that treats stormwater with appropriate BMPs and removes pollutants in accordance with the most current edition of the Maine Department of Environmental Protection BMP Manual, —Stormwater Management for Maine. Pollutants sought to be removed include suspended solids, nitrates, hydrocarbons and heavy metals. Such special treatment of the first flush of runoff may include detention, infiltration, filtering and trapping of pollutants. (Ordained 9/26/11; effective 10/27/11)

#### **F. Special Parking Standards.**

##### **1. Revised Off-Street Parking Standards.**

Off-street parking must be provided in accordance with Section 16.8.9.4 unless modified below for the following uses:

- a. Dwellings: one and one-half parking space for each dwelling unit;
- b. Retail stores: one parking space for each four hundred (400) square feet of gross floor area;
- c. Drive-in restaurants, snack bars and fast food outlets, but excluding restaurants where ordering and/or pickup of food may take place from a motorized vehicle: one parking space for every three seats, but in no case less than four spaces;
- d. Conference centers: one parking space for every sixty (60) square feet in the largest assembly or meeting room.

##### **2. Joint Use Parking.**

Required off-street parking may be satisfied by the joint use of parking spaces by two or more uses if the applicant can show that parking demand is non-conflicting and will reasonably provide adequate parking for multiple uses without parking overflowing into undesignated areas. Non-conflicting periods may consist of day time as opposed to evening hours of operation or weekday as opposed to weekend hours of operation or seasonal variation in parking demand. In making this determination under development plan review, the Planning Board must consider the following factors:

- a. Such joint parking areas must be held under ownership or under terms of a contractual agreement that ensures such parking remains available to all users of the shared parking spaces;



- b. Analysis is based on a most frequent basis, not a “worst case” scenario;
- c. Joint use parking areas must be located within reasonable distance to the uses served, but do not need to be located on the same parcel as the uses served;
- d. Ease and safety of pedestrian access to shared parking by the users served, including any improvements or shuttle service necessary;
- e. Such joint parking areas may not be located in residential zoning districts.

3. Off-Site Parking.

Required off-street parking for employee use may be satisfied at off-site locations located within one thousand (1,000) feet measured along lines of public access from the lot to be served provided such parking area is on other property owned by the applicant or under terms of a contractual agreement that will ensure such parking remains available to the use served.

4. Employee Parking.

Required off-street parking for employee use may be satisfied at off-site locations greater than one thousand (1,000) feet from the lot served upon a finding by the Planning Board that such parking is practicable and will reasonably prevent overflow parking from occurring on Badgers Island in undesignated locations. In making this determination under development review, the Planning Board must consider the following factors:

- a. Such parking must be located within a reasonable distance to the users.
- b. Such parking area must be on other property of the applicant or under terms of a contractual agreement that will ensure such parking remains available to the use served.
- c. Safe and convenient means of transporting users to and from the off-site parking must be demonstrated by the applicant.
- d. Such off-site parking area must not be located in residential zones of the Town.

Off-site parking for use by employees may deviate from the dimensional standards contained in Figure 2 for Chapter 16.8, Parking Space Design, if the applicant can demonstrate that the proposal practicably accommodates the number of parking spaces proposed.

5. Parking Demand Management (PDM) Strategies.

Parking demand strategies are measures geared toward affecting the demand side of the parking equation rather than the supply side. They attempt to change people's behavior away from traveling to work as a single occupant in an automobile to be parked near the work site. To be successful, they must rely on incentives or disincentives to make these shifts in behavior attractive to the traveler.

A portion of required off-street parking may be satisfied by an owner incorporating PDM strategies to effectively reduce demand for parking stalls as determined by the planning board. In making this determination the planning board, under development plan review, the board must consider the following factors:

- a. The written commitment of the employer to maintain and enforce parking policies to reduce demand for parking stalls;

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- b. The likelihood that specific incentives and policies adopted by the applicant will reduce parking demand on a regular basis throughout the year;
- c. Written commitments by employees to participate in PDM strategies;
- d. The results of any studies demonstrating the effectiveness of strategies adopted by the applicant to reduce parking demand.

PDM strategies include, but are not limited to, the following:

- i. Increase the Number of Persons Per Parked Vehicle. Potential incentives:
  - Preferential parking locations for car pools and van pools;
  - Guaranteed ride home programs/taxi subsidies;
  - Employer provision of vans for van pools;
  - Financial incentives to participants in car pools and van pools.
- ii. Increase the Number of Persons Using an Alternative Mode of Travel to the Automobile, Such as Walking, Bicycling, Motorcycle, Moped, Bus, and Shuttle Service. Potential incentives:
  - Preferential parking locations for alternative modes of travel;
  - Provision of changing rooms, lockers and showers;
  - Early work release for employees using alternative modes of travel;
  - Financial subsidies toward the purchase of alternative modes of travel to be used for commuting;
  - Guaranteed ride home programs in inclement weather;
  - Preferential work station locations;
  - Free use of a business vehicle for errands, lunch and off-site appointments.
- iii. Influencing the Time of, or Need to, Travel to Work. Potential incentives:
  - Reward employees who telecommute from their home or other remote location;
  - Offer an optional four-day, forty (40) hour work week as an alternative to a five-day work week;
  - Allow non-overlapping early and late work shifts;
  - Flextime.

**16.3.2.15 Mixed Use - Kittery Foreside MU-KF.**

**A. Purpose.**

To provide business, service, and community functions within the Mixed Use - Kittery Foreside zone and to provide a mix of housing opportunities in the historic urbanized center of the community and to allow for use patterns which recognize the densely built-up character of the zone and the limitations for providing off-street parking. Design review is used to facilitate the revitalization of downtown Kittery Foreside as a neighborhood center, while promoting economic development of service businesses and walk-in shopping as well as respecting the zone's historic and residential character.

**B. Permitted Uses.**

1. Dwelling units in single-family, duplex, and multifamily configurations and units in a mixed-use building up to twelve (12) dwelling units per lot, but excluding mobile homes;
2. Public open space recreational uses;
3. School (including nursery school), hospital, eldercare facility, long-term nursing care facility, convalescent care facility, municipal or state building or use, church; or any other institution of educational, religious, philanthropic, fraternal, political, or social nature.;
4. Accessory uses including home occupation and church rectory;
5. Retail business and service establishments excluding those where the principal activity entails outdoor sales and/or storage;
6. Business and professional offices, including financial institutions;
7. Shuttle service and ride sharing facilities;
8. Restaurant, coffee shop, bakery, cafes and similar food service operations but excluding drive-in facilities;
9. Art studio or gallery;
10. Grocery store, food store;
11. Personal and/or business service;
12. Inn;
13. Commercial or private parking lots;
14. Marinas;
15. Commercial boating and fishing uses and facilities, provided only incidental cleaning and cooking of seafood occur at the site;
16. Place of assembly, including theater;
17. Temporary, intra-family dwelling unit;
18. Accessory dwelling units; and
19. Specialty food and/or beverage facility.

**C. Special Exception Uses.**

1. Research and development;
2. Public utility facilities, including substations, pumping stations, and sewage treatment facilities.

**D. Standards.**

1. The design and performance standards of Chapters 16.8 and 16.9 must be met except where specifically altered in this subsection.
2. Dimensional Standards. The following space standards apply:

Minimum land area per dwelling unit

5,000 square feet

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Minimum lot size	5,000 square feet
Minimum street frontage	0 feet
Minimum front yard along:	
Government Street east of Jones Avenue including	
Lot 107 at the corner of Government and Walker Streets	0 feet
other streets	10 feet
Wallingford Square	0 feet
(Ordained 9/24/12; effective 10/25/12)	
Minimum rear and side yards	10 feet
Minimum separation distance between principal	
buildings on the same lot	10 feet
Maximum building height	40 feet*
*Except that for buildings located on lots that abut tidal waters, the highest point on the primary structure of the building including the roof, but excluding chimneys, towers, cupolas, and similar appurtenances that have no floor area, may be not more than thirty-five (35) feet above the average grade between the highest and lowest elevations of the original ground level adjacent to the building.	
Minimum setback from:	
water body and wetland water dependent uses	0 feet
all other uses (including buildings and parking)	75 feet
	unless modified, according to the terms of subsection (E) of this Section.
Maximum building coverage	60 percent
Minimum open space on the site	40 percent
Minimum land area per unit for eldercare facilities that are connected to the public sewerage system:	
dwelling unit with two or more bedrooms	3,000 square feet
dwelling unit with less than two bedrooms	2,500 square feet
residential care unit	2,000 square feet
Minimum land area per bed for nursing care and convalescent care facilities that are connected to the public sewerage system	1,500 square feet

### 3. Maximum Building Footprint.

The maximum area of the building footprint of any new building is one thousand five hundred (1,500) square feet unless the building is replacing a larger building that existed on the lot as of April 1, 2005.

A. If the footprint of the pre-existing building was larger than one thousand five hundred (1,500) square feet, the maximum size of the footprint of the pre-existing building was larger than one thousand five hundred

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(1,500) square feet, the maximum size of the footprint of the new building may be no larger than the footprint of the pre-existing building.

B. If the footprint of the new building is larger than one thousand five hundred (1,500) square feet, the width of the new building as measured parallel to the front lot line may not be greater than the width of the pre-existing building.

#### 4. Design Standards.

Any new building, or additions or modifications to an existing building that:

(1) cumulatively increases the building footprint or building volume by more than thirty percent (30%) after April 1, 2005, or

(2) is subject to shoreland overlay zoning as set forth in Section 16.7.3.5.1 must conform to the following standards.

**NOTE:** This requirement does not apply to the replacement of a building destroyed by accidental or natural causes after April 1, 2005 that is rebuilt within the pre-existing building footprint and that does not increase the pre-existing building volume by more than thirty percent (30%).

##### a. Placement and Orientation of Buildings Within a Lot.

i. The placement of buildings on the lot must acknowledge the uniqueness of the site, the neighboring buildings, and the natural setting. Existing views and vistas must be preserved in the design of the site and buildings, and buildings must be placed to frame, rather than block, vistas.

ii. Buildings and the front elevation must be oriented facing the street on which the building is located. The siting of buildings on corner lots must consider the placement of buildings on both streets.

##### b. Overall Massing of Buildings.

The overall massing objective is to simulate a concentrated use of space in the Foreside zone while avoiding the use of large, multi-unit buildings. In the interest of this objective, building footprints must meet the maximums set forth above. Larger parcels may be developed but will require the use of multiple buildings with smaller footprints. The smaller scale of the buildings will allow new projects to fit in with the existing architectural styles of the Foreside zone.

##### c. Grouping of Smaller Buildings.

When smaller buildings that are part of one project are placed adjacent to one another on the same lot or adjacent lots, each building must have its own structure and elevation treatment that is different from its neighbor. Small decorative wings may be attached to larger structures if well integrated into the overall arrangement of shapes.

##### d. Building Details.

Buildings must include architectural details that reflect the historic style of the Foreside zone. Molding and trim must be used to decorate or finish the surface of buildings and doors. Eaves and overhangs should be incorporated into the design.

##### e. Roof Slopes and Shapes.

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- i. Allowable roof shapes include a simple gable, gambrel, saltbox, and hip. The minimum roof pitch must be 8:12 (rise over run) except in the case of a hip roof where a lesser pitch is acceptable.
- ii. The roof pitch of elements that link buildings or portions of buildings must be the same or greater than the pitch of the roofs on the buildings that are being linked.
- iii. Flat or nearly flat shed roofs are not allowed except for porches, dormers, or attachments distinct from the primary structure or where systems are concealed by standard roof forms.
- iv. The roof pitch of additions or wings must be similar to the pitch of the primary roof. Clusters of buildings must apply the same roof plan principles to pitch and link roofs.

### f. Fencing and Walls.

- i. Fencing may be used to separate public and private spaces, mark property lines, and protect plantings.
- ii. Fences must harmonize with nearby structures and not unduly interfere with existing scenic views or vistas.
- iii. Picket and other medium height fences and low stone walls are permitted.
- iv. Modern concrete walls and similar structures are prohibited.
- v. Chain-link and stockade fences are not appropriate in front yards and may be used in side and rear yards only if compatible with the overall design of the site.
- vi. Waste receptacles, dumpsters, exterior systems, service entrances and similar areas must be screened with board fences, board and lattice fences, and/or landscaping.

### g. Utilities.

All utilities serving a new building including electricity, telephone, cable, Internet, and alarm systems must be placed underground from the access pole.

### h. Preservation of Trees.

Existing large, healthy trees must be preserved if practical.

## 5. Signage

Display of signboard and/or products for sale may be placed on a Town sidewalk only if:

- a. Products for sale displayed outside the building are limited to an area extending no greater than two feet from the front facade of the building;
- b. Signboards are permitted in accordance with a design detailing style and size submitted by Kittery Foreside Committee and approved by the Planning Board and on file in the planning office;
- c. Signboards and/or products for sale must be removed from the sidewalk at the close of each business day;

d. An annual permit must be obtained from the Code Enforcement Officer. Permits are issued for a calendar year or portion thereof, to expire December 31st of each year. Sign permit application fee, reference Appendix A.

#### **E. Special Parking Standards.**

The Kittery Foreside zone is already largely built up and many buildings either completely or almost completely cover the lot on which they are located. Therefore, it is not possible to comply with parking standards which would otherwise be required for open land. To encourage the reuse of existing structures as far as practical, the Town establishes special parking standards and conditions within the zone.

##### **1. Revised Off-Street Parking Standards.**

Insofar as practical, parking requirements are to be met on-site unless an existing building covers so much of the lot as to make the provision of parking impractical in whole or in part. If meeting the parking requirements is not practical, then the parking demand may be satisfied off-site or through joint use agreements as specified herein.

Notwithstanding the off-street parking requirements in Article IX of Chapter 16.8, minimum parking requirements for the uses below are modified as specified herein:

- a. Dwelling units in buildings that existed as of April 1, 2005 including the replacement of units destroyed by accidental or natural causes regardless of how configured: one parking space per dwelling unit;
- b. Dwelling units in new buildings including the replacement of existing buildings other than the replacement of units destroyed by accidental or natural causes: one and one-half parking spaces per dwelling unit;
- c. Retail, business office, or bank facilities: one parking space for each four hundred (400) square feet of gross floor area;
- d. Professional office: one parking space for each three hundred (300) square feet of gross floor area;
- e. Inn: one parking space for each guest room;
- f. Church: None required, if primary use occurs on weekends;
- g. Restaurants: one parking space for each one hundred (100) square feet of gross floor area used by the public.

**NOTE:** For each use in the zone, the total parking demand is calculated using the standards above or in Section 16.8.9.4 if not modified above. Then each nonresidential use is exempt from providing off-street parking for the first three required spaces. For uses requiring a demand of greater than three, then the off-street parking is to be provided on-site and/or in accordance with subsections (E)(2) and (3) of this Section.

##### **2. Maximum Parking on New Impervious Surface.**

Not more than one and one-half parking spaces per dwelling unit may be created on new impervious surface in conjunction with the construction of a new or replacement building. This restriction does not apply to parking spaces located within the same building with the dwelling units, to spaces located on pre-existing

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impervious surface, or to spaces located on a pervious surface such as parking pavers designed to allow infiltration of precipitation.

### 3. Off-Site Parking.

Required off-street parking may be satisfied at off-site locations provided such parking is on other property owned by the applicant or is under the terms of a contractual agreement that will ensure such parking remains available for the uses served. Applicant must present evidence of a parking location and a contractual agreement to the Town Board or officer with jurisdiction to review and approve.

### 4. Joint Use Parking.

Required off-street parking may also be satisfied by the joint use of parking space by two or more uses if the applicant can show that parking demand is non-conflicting and will reasonably provide adequate parking for the multiple uses without parking overflowing into undesignated areas. Non-conflicting periods may consist of day time as opposed to evening hours of operation or weekday as opposed to weekends or seasonal variation in parking demand. In making this determination under development plan review, the Planning Board is to consider the following factors:

- a. Such joint parking areas must be held under ownership of the applicant or under terms of a contractual agreement that ensures such parking remains available to all users of the shared parking spaces;
  - b. Analysis is to be based on a most frequent basis, not a “worst case” scenario;
  - c. Joint use parking areas must be located within reasonable distance to the use served, but do not need to be located on the same lot as the uses served;
  - d. Ease and safety of pedestrian access to shared parking by the users served, including any improvements or shuttle service necessary;
  - e. Such joint parking areas must not be located in residential zones of the Town.
- The Planning Board must make a final determination of the joint use and/or off-site parking spaces that constitute an acceptable combination of spaces to meet the required parking demand.

## F. Design Review.

KFC advisory design review is required for any project involving the construction of a new building, or the enlargement or modification of an existing building that:

(1) cumulatively increases the building footprint or building volume by more than thirty percent (30%) after April 1, 2005, or

(2) is subject to the shoreland overlay zone requirements as set forth in Section 16.43.2.17 , is subject to an advisory design review by the Kittery Foreside Committee (KFC).

**NOTE:** This requirement does not apply to the replacement of a building destroyed by accidental or natural causes after April 1, 2005 that is rebuilt within the pre-existing building footprint and that does not increase the pre-existing building volume by more than thirty percent (30%). This review is limited to consideration of the project's conformance with the design standards set forth in subsection (E)(4) of this Section. Upon receipt of an application for a project in the district that is subject to this requirement, Town staff shall forward the application to the chair of the KFC. The application must contain adequate information to allow the



committee to evaluate the project's conformance with the design standards of subsection (E)(4) of this Section.

The KFC has a maximum of forty-five (45) days to complete its review of the project. The KFC is to provide a written report documenting its findings relative to conformance with the design standards and any recommendations for changes to the project needed to conform to the standards. The design review must be completed prior to approval of a development plan under Chapter 16.10, or the issuance of a building permit if development review is not required, unless the KFC fails to complete its review within forty-five (45) days in which case the application must be processed without the KFC review. The findings of the design review must be provided to the Planning Board and/or CEO for consideration in their actions relative to the project.

#### **16.3.2.16 Transportation – Maine Turnpike T-MT.**

##### **A. Purpose.**

The purpose of the Transportation – Maine Turnpike Zone (T-MT) is to provide for the safe, effective, efficient and environmentally compatible use of the right-of-way owned and operated by the Maine Department of Transportation and the Maine Turnpike Authority as authorized by the State as well as for safe and environmentally compatible buffering for the adjacent land uses along the right-of-way.

##### **B. Permitted Uses.**

Permitted and special exception land uses include the highway, information center and other uses as authorized by the State.

##### **C. Special Exception Uses.** None

##### **D. Standards.**

1. The Design and Performance Standards of Chapters 16.8 and 16.9 and Shoreland and Resource Protection Overlay Zones where applicable.
2. Dimensional standards:

Minimum land area per dwelling unit	Not applicable
Minimum lot size	Not applicable
Minimum street frontage	Not applicable
Minimum front yard	Not applicable
Maximum building coverage	Not applicable
Minimum rear and side yards	Not applicable
Maximum building height	35 feet
Minimum distance between principal buildings on the same lot	Not applicable
Minimum setback from water bodies and wetlands	Not applicable

### **16.3.2.17 Shoreland Overlay Zone OZ-SL.**

#### **A. Purposes.**

The purposes of this Code are to further the maintenance of safe and healthful conditions, to prevent and control water pollution, to protect fish spawning grounds, aquatic life, bird and other wildlife habitat, to protect buildings and lands from flooding and accelerated erosion, to protect archaeological and historic resources, to protect commercial fishing and maritime industries, to protect freshwater and coastal wetlands, to control building sites, placement of structures and land uses, to conserve shore cover, and visual as well as actual points of access to inland and coastal waters, to conserve natural beauty and open space, and to anticipate and respond to the impacts of development in shoreland areas.

##### **1. Authority.**

These provisions have been prepared in accordance with the provisions of 38 M.R.S. §435-449.

##### **2. Applicability and Boundaries.**

The provisions of this Section apply to all uses, lots and structures within the following:

a. Shoreland Overlay Zone – Water Body/Wetland Protection Area – 250' - OZ-SL-250' - land areas within 250 feet, horizontal distance, of the:

- i. normal high-water line of any river or saltwater body.
- ii. upland edge of a coastal wetland, including all areas affected by tidal action.
- iii. land edge of a fresh water wetland connecting to a protected stream as identified on the Zoning Map.

b. Shoreland Overlay Zone - Stream Protection Area - 75' - OZ-SL-75'

i. Land areas within seventy-five (75) feet, horizontal distance, of the normal high-water line of a stream, exclusive of those areas within two-hundred and fifty (250) feet, horizontal distance, of the normal high-water line of a river, or within two hundred and fifty (250) feet, horizontal distance, of the upland edge of a freshwater or coastal wetland.

ii. However, where a stream and its associated Shoreland Overlay Zone area are located within two-hundred and fifty (250) feet, horizontal distance, of the above water bodies or wetlands, that land area will be regulated under the provisions of the Shoreland Overlay Zone associated with that water body or wetland.

iii. Where uncertainty exists as to the exact location of the Shoreland Overlay Zone boundary, the Planning Board with expert consultation as may be required, is the final authority as to location.

#### **B. Permitted and Special Exception Land Use.**

The following uses in this Section are allowed in accordance with the land use standards established in the underlying base zone in Chapter 16.3, Zoning Regulations and land uses identified by the Mandatory Shoreland Zoning Act, 38 M.R.S. §435-449.

##### **1. Residential - Rural Zone (R-RL).**

###### **a. Permitted Uses.**

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- i. Public open space recreational uses;
  - ii. Any agricultural building or use except a sawmill, piggery, or the raising of poultry for commercial purposes;
  - iii. Accessory uses and buildings;
  - iv. Individual private campsite.
- b. Special Exception Uses.
- i. Dwellings, or modular home, excluding mobile home, in a single-family or duplex configuration;
  - ii. School, hospital, long-term nursing care facility, convalescent care facility, municipal building or use, church, or other institution of educational, religious, philanthropic, fraternal or social nature;
  - iii. Home occupations;
  - iv. Day care facility;
  - v. Public utility facilities including substations, pumping stations and sewage treatment facilities;
  - vi. Mineral extraction subject to Chapter 16.9.1.2;
  - vii. Recreation activity buildings and grounds operated for profit exclusive of drive-in theaters.
2. Residential – Suburban Zone (R-S).
- a. Permitted Uses.
- i. Public open space recreational uses;
  - ii. Day care facility;
  - iii. Elderly day care facility;
- b. Special Exception Uses.
- i. Dwellings in a multi-unit residential configuration with not more than four units per building and mobile homes;
  - ii. School or educational facility (including nursery schools), eldercare facility, hospital, long-term nursing care facility, convalescent care facility, municipal, county, or state building or use, church; or other institution of educational, religious, philanthropic, fraternal, political, or social nature. Any single listed use may not occupy more than five thousand (5,000) square feet of floor area;
  - iii. Public utility facilities including substations, pumping stations and sewage treatment facilities;
  - iv. Mineral extraction subject to Section 16.9.1.2;
  - v. Home occupations.
3. Residential - Kittery Point Village (R-KPV)
- a. Permitted Uses.
- i. Any agricultural building or use except a sawmill, piggery, or the raising of poultry for commercial purposes;
  - ii. Accessory uses and buildings;
  - iii. Day care facility;
- b. Special Exception Uses.
- i. Dwellings, or modular home, excluding mobile homes, in a single-family or duplex configuration;
  - ii. School or educational facility (including nursery schools), municipal, county, or state building or use, church; or other institution of educational, religious, philanthropic, fraternal, political, or social nature. Any single listed use may not occupy more than five thousand (5,000) square feet of floor area;
  - iii. Home occupations;

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iv. Public utility facilities including substations, pumping stations and sewage treatment facilities.

### 4. Residential – Urban Zone (R-U).

#### a. Permitted Uses.

- i. Public open space recreational uses;
- ii. Day care facility;
- ii. Accessory uses and buildings;

#### b. Special Exception Uses.

- i. Dwellings, or manufactured housing, in a single-family or duplex configuration;
- ii. School (including day nursery), hospital, long-term nursing care facility, convalescent care facility, municipal or state building or use, church, or any other institution of educational, religious, philanthropic, fraternal, political or social nature,;
- iii. Home occupations;
- iv. Recreational uses exclusive of drive-in theaters;
- v. Public utility facilities including substations, pumping stations, and sewage treatment facilities;
- vi. Inn;

### 5. Residential - Village Zone (R-V).

#### a. Permitted Uses.

- i. Public recreation;
- ii. Municipal, county, or state building or use;
- iii. Accessory buildings and structures.

#### b. Special Exception Uses.

- i. Dwellings, or modular home, excluding mobile home, in a single-family or duplex configuration;
- ii. Home occupation;
- ii. Public utility facilities, including substations, pumping stations, and sewage treatment facilities;
- iii. Day care or nursery school facility for thirteen (13) or more persons in care, in conformance with the standards for a major home occupation (see Section 16.8.22.3);

### 6. Residential – Rural Conservation Zone (R-RLC).

#### a. Permitted Uses.

- i. Any agricultural building or use except sawmill, piggery, or the raising of poultry for commercial purposes;
- ii. Timber harvesting;
- iii. Public recreation;
- iv. Accessory uses and buildings;

#### b. Special Exception Uses.

- i. Dwellings, or modular home, excluding mobile home, in a single-family or duplex configuration;
- ii. Home occupation;
- iii. School, municipal building or use; or any other institution of educational, religious, philanthropic, fraternal, or social nature;
- iv. Public and private open space recreational uses exclusive of drive-in theaters;

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- v. Public utility facilities including substations, pumping stations, and sewage treatment facilities;
  - vi. Day care facility;
- c. Prohibited Uses. Prohibited use is any use not listed as a permitted or special exception use.
7. Conservation (CON).
- a. Permitted Uses.
- i. Existing land conservation uses.
  - ii. Public recreation.
  - iii. Accessory structure including restrooms.
- b. Special Exception Uses.
- i. Public facility
8. Business – Local Zone (B-L).
- a. Permitted Uses.
- i. Public open space recreational uses;
  - ii. Accessory uses and buildings;
- b. Special Exception Uses.
- i. Dwellings, or modular home, excluding mobile home, in a single-family or duplex configuration;
  - ii. School or educational facility (including nursery schools), day care facility, eldercare facility, hospital, long-term nursing care facility, convalescent care facility, municipal, county, or state building or use, church; or any other institution of educational, religious, philanthropic, fraternal, political or social nature;
  - iii. Home occupation;
  - iv. Retail business and service establishments, but excluding those of which the principal activity entails outdoor sales and/or storage and excluding those specifically mentioned under subsection C of this Section;
  - v. Business and professional offices;
  - vi. Mass transit station;
  - vii. Commercial parking lot or parking garage;
  - viii. Restaurant;
  - ix. Art studio or gallery;
  - x. Convenience store, food store, grocery store;
  - xi. Personal service;
  - xii. Business service;
  - xiii. Building materials, but excluding those of which the principal activity entails outdoor sales and/or storage;
  - xiv. Garden supply;
  - xv. Conference center;
  - xvi. Commercial boating and fishing uses and facilities, provided only incidental cleaning and cooking of seafood occur at the site;
  - xvii. Motel, hotel, inn, or rooming house;
  - xviii. Place of public assembly, including theater;
  - xix. Public utility facilities including substation, pumping stations, and sewage treatment facilities;
  - xx. Apartment building;
  - xxi. Residential dwelling units as part of a mixed-use building;
  - xxii. Specialty food and/or beverage facility.

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### 9. Business – Local Zone (B-L1).

#### a. Permitted Uses.

- i. Public open space recreational uses;
- ii. Accessory uses and buildings;
- iii. Aquaculture;

#### b. Special Exception Uses.

- i. Dwellings, or modular home, excluding mobile home, in a single-family or duplex configuration;
- ii. Inn;
- iii. Home occupation;
- iv. Retail business and service establishments, but excluding those of which the principal activity entails outdoor sales and/or storage;
- v. Business and professional offices;
- vi. Mass transit station;
- vii. Commercial parking lot or parking garage;
- viii. Restaurant;
- ix. Art studio or gallery;
- x. Convenience store, food store, grocery store;
- xi. Personal service;
- xii. Business service;
- xiii. Building materials, but excluding those of which the principal activity entails outdoor sales and/or storage;
- xiv. Garden supply;
- xv. Conference center;
- xvi. Commercial boating and fishing uses and facilities, provided only incidental cleaning and cooking of seafood occur at the site;
- xvii. Motel, hotel, inn, or rooming house;
- xviii. Funeral home;
- xix. Place of public assembly, including theater;
- xx. Public utility facilities including substation, pumping stations, and sewage treatment facilities;
- xxi. Farmer's market; and
- xxii. Specialty food and/or beverage facility.

### 10. Business - Park Zone (B-PK).

#### a. Permitted Uses.

- i. The following land uses are permitted for projects that are cluster mixed-use developments:
  - (a). Art studio/gallery;
  - (b). Mass transit station;
  - (c). Public open space recreational uses, recreational facilities, and selected commercial recreation;
  - (d). Research and development;
  - (e). Public utility facilities including substations, pumping stations, and sewage treatment facilities;
- ii. The following land uses are permitted for projects that are not cluster mixed-use developments:
  - (a). Accessory uses and buildings;

b. Special Exception Uses. The following uses are permitted in a cluster mixed use development as a special exception:

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- i. Business and professional offices;
- ii. Business services;
- iii. Commercial parking lot or parking garage;
- iv. Conference center;
- v. Cluster residential development;
- vi. Grocery, food store, convenience store, including gas station;
- vii. Mechanical services, excluding junkyard;
- viii. Motel, hotel, rooming house, inn;
- ix. Personal service;
- x. Place of public assembly, including theater;
- xi. Repair services;
- xii. Restaurant;
- xiii. Retail uses and wholesale businesses excluding used car lots and junkyards;
- xiv. School (including day nursery), university, museum, hospital, municipal or state building or use, church, or any other institution of educational, religious, philanthropic, fraternal, political or social nature;
- xv. Shops in pursuit of trade;
- xvi. Veterinary hospital;
- xvii. Warehousing and storage; and
- xviii. Specialty food and/or beverage facility.

### 11. Commercial – 1 Zone (C-1).

#### a. Permitted Uses.

- i. Public open space recreational uses, recreational facilities, and selected commercial recreation;
- ii. School (including nursery school), hospital, long-term nursing care facility, convalescent care facility, municipal or state building or use, church; or any other institution of educational, religious, philanthropic, fraternal, political, or social nature;
- iii. Accessory uses and buildings including minor or major home occupations;
- iv. Public utility facilities including substations, pumping stations, and sewage treatment facilities;

#### b. Special Exception Uses.

- i. Day care facility;
- ii. Business and professional offices;
- iii. Mass transit station;
- iv. Commercial parking lot or parking garage;
- v. Retail uses and wholesale businesses excluding used car lots and junkyards;
- vi. Service establishments;
- vii. Restaurant;
- viii. Veterinary hospital;
- ix. Motel, hotel, rooming house, inn;
- x. Art studio/gallery;
- xi. Grocery, food store, convenience store;
- xii. Business service;
- xiii. Personal service;
- xiv. Building materials and garden supply;
- xv. Conference center;
- xvi. Repair services;
- xvii. Place of assembly, including theater;

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- xviii. Transportation terminal excluding truck stops;
- xix. Warehousing and storage;
- xx. Research and development;
- xxi. Mini storage;
- xxii. Aquaculture; and
- xxiii. Specialty food and/or beverage facility.

### 12. Commercial – 2 Zone (C-2).

#### a. Permitted Uses.

- i. Public open space recreational uses, recreational facilities, and selected commercial recreation;
- ii. School (including nursery school), hospital, long-term nursing care facility, convalescent care facility, municipal or state building or use, church; or any other institution of educational, religious, philanthropic, fraternal, political, or social nature;
- iii. Accessory uses and buildings including minor or major home occupations;
- iv. Public utility facilities including substations, pumping stations, and sewage treatment facilities;
- v. Aquaculture.

#### b. Special Exception Uses.

- i. Commercial parking lot or parking garage;
- ii. Retail uses and wholesale businesses excluding used car lots and junkyards;
- iii. Service establishments;
- iv. Restaurant;
- v. Business and professional offices;
- vi. Mass transit station
- vii. Commercial boating and fishing uses and facilities, provided only incidental cleaning and cooking of seafood occur at the site;
- viii. Veterinary hospital;
- ix. Motel, hotel, rooming house, inn;
- x. Art studio/gallery;
- xi. Grocery, food store, convenience store;
- xii. Day care facility;
- xiii. Business service;
- xiv. Personal service;
- xv. Conference center;
- xvi. Repair services;
- xvii. Boat yard;
- xviii. Place of assembly, including theater;
- xix. Transportation terminal excluding truck stops;
- xx. Warehousing and storage;
- xxi. Mini storage;
- xxii. Research and development;
- xxiii. Adult entertainment establishment not located within one thousand (1,000) feet of an existing private residence, school or place of worship;
- xxiv. Shops in pursuit of trade;
- xxv. Construction services; and
- xxvi. Specialty food and/or beverage facility.



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### 13. Commercial – 3 Zone (C-3).

#### a. Permitted Uses.

- i. Public open space recreational uses, recreational facilities, and selected commercial recreation;
- ii. School (including nursery school), hospital, eldercare facility, long-term nursing care facility, convalescent care facility, municipal or state building or use, church; or any other institution of educational, religious, philanthropic, fraternal, political, or social nature;
- iii. Accessory uses and buildings including minor or major home occupations;
- iv. Aquaculture.
- v. Public utility facilities including substations, pumping stations, and sewage treatment facilities;

#### b. Special Exception Uses.

- i. Business and professional offices;
- ii. Mass transit station;
- iii. Commercial parking lot or parking garage;
- iv. Retail uses and wholesale businesses excluding used car lots and junkyards;
- v. Service establishments;
- vi. Restaurant;
- vii. Veterinary hospital;
- viii. Motel, hotel, rooming house, inn;
- ix. Art studio/gallery;
- x. Grocery, food store, convenience store;
- xi. Day care facility;
- xii. Business service;
- xiii. Personal service;
- xiv. Conference center;
- xv. Boat yard;
- xvi. Commercial boating and fishing uses and facilities, provided only incidental cleaning and cooking of seafood occur at the site;
- xvii. Place of assembly, including theater;
- xviii. Transportation terminal excluding truck stops;
- xix. Warehousing and storage;
- xx. Mini storage;
- xxi. Research and development;
- xxii. Construction services.
- xxiii. Shops in pursuit of trade;
- xxiv. Adult entertainment establishment not located within one thousand (1,000) feet of an existing private residence, school or place of worship; and
- xxv. Funeral home.

### 14. Industrial Zone (IND).

#### a. Permitted Uses.

- i. Research facilities;
- ii. Accessory uses and buildings including minor or major home occupations.

#### b. Special Exception Uses.

- i. Manufacturing, processing and treatment;
- ii. Municipal and governmental uses;

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- iii. Public utility facilities including substations, pumping stations, and sewage treatment plants; and
- iv. Specialty food and/or beverage facility.

### 15. Mixed Use Zone (MU).

#### a. Permitted Uses.

- i. Agricultural uses and practices, except a piggery or the raising of poultry for commercial purposes;
- ii. Art studio/gallery;
- iii. Church or institution of religion;
- iv. Research and development;
- v. Public open space or recreation;
- vi. Municipal or state building or use;
- vii. Institution of philanthropic, fraternal, political, or social nature, which is not used for residential or overnight occupancy;
- viii. Timber harvesting;
- ix. Home occupations;

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#### b. Special Exception Uses.

##### i. Dwellings, limited to the following:

- (a). Single-family dwellings on lots of record as of April 1, 2004,
- (b). Dwelling units on the upper floors of a mixed-use building that is served by public sewerage;

- ii. Business and professional offices;
- iii. Boat yard;
- iv. Grocery store, food store, convenience store or neighborhood grocery;
- v. Day care facility;
- vi. Commercial parking lot or garage;
- vii. Hospital;
- viii. Inn;
- ix. Institution of education, which is not used for residential or overnight occupancy;
- x. Mass transit station;
- xi. Restaurant;
- xii. Convalescent care facility, long-term nursing care facility;
- xiii. Personal services;
- xiv. Repair service;
- xv. Selected commercial recreation;
- xvi. Theater;
- xvii. Veterinary hospital;
- xviii. Accessory buildings and uses;
- xix. Retail use, a single use not to exceed fifty thousand (50,000) square feet in gross floor area;
- xx. Eldercare facility;
- xxi. Housing for elderly as part of a mixed use project;
- xxii. Commercial kennel;
- xxiii. Motel or hotel;
- xxiv. Public utility facilities including substations, pumping stations, and sewage treatment facilities;
- xxv. Shop in pursuit of trades;
- xxvi. Transportation terminal;
- xxvii. Wholesale business;

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xxviii. Warehousing/storage;  
xxix. Construction services;  
xxx. Funeral home;  
xxxi. Research and development; and  
xxxii. Specialty food and/or beverage facility.  
(Ordained 9/26/11; effective 10/27/11)

### 16. Mixed Use - Badger's Island Zone (MU-BI).

#### a. Permitted Uses.

- i. Public open space and recreational uses;
- ii. Shuttle service and ride sharing facilities
- iii. Aquaculture;
- iv. Research laboratories.

#### b. Special Exception Uses.

- i. Dwellings including modular homes in a single-family or duplex configuration, excluding mobile homes;
- ii. School, municipal or state building or use, church, or any other institution of educational, religious, philanthropic, fraternal, political or social nature;
- iii. Accessory buildings and uses;
- iv. Home occupations;
- v. Day care facility;
- vi. Retail business and service establishments, but excluding those with any outdoor sales and/or storage;
- vii. Business and professional offices;
- viii. Restaurant with the hours of operation limited to five a.m. to eleven p.m. but excluding restaurants where ordering and/or pickup of food may take place from a motorized vehicle;
- ix. Art studio/gallery;
- x. Grocery store, food store;
- xi. Personal, business or service;
- xii. Inn;
- xiii. Boat yard;
- xiv. Marina;
- xv. Commercial boating and fishing uses and facilities, provided only incidental cleaning and cooking of seafood occur at the site;
- xvi. Commercial recreational use;
- xvii. Place of assembly;
- xviii. Theater;
- xix. Public utility facilities, including substations, pumping stations, and sewage treatment facilities; and
- xx. Specialty food and/or beverage facility.

### 17. Mixed Use- Kittery Foreside Zone (MU-KF).

#### a. Permitted Uses.

- i. Public open space recreational uses;

#### b. Special Exception Uses.

- i. Dwellings in a single-family or duplex configuration, excluding mobile homes;

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- ii. Retail business and service establishments excluding those where the principal activity entails outdoor sales and/or storage;
- iii. Business and professional offices, including financial institutions;
- iv. Shuttle service and ride sharing facilities;
- v. Restaurant, coffee shop, bakery, cafes and similar food service operations but excluding drive-in facilities;
- vi. Art studio or gallery;
- vii. Grocery store, food store;
- viii. Personal and/or business service;
- ix. Inn;
- x. Commercial or private parking lots;
- xi. Marinas;
- xii. Commercial boating and fishing uses and facilities, provided only incidental cleaning and cooking of seafood occur at the site;
- xiii. Home occupations;
- xiv. Place of assembly;
- xv. Theater;
- xvi. Research and development;
- xvii. Public utility facilities, including substations, pumping stations, and sewage treatment facilities; and
- xviii. Specialty food and/or beverage facility.

18. Transportation – Maine Turnpike (T-MT).

a. Permitted Uses.

Permitted and special exception land uses include the highway, information center and other uses as authorized by the State.

b. Special Exception Uses. None

**C. Special Exception Uses.** (included in Section B, above)

**D. Standards.**

1. Minimum lot standards

a. Minimum lot size by base zone, within the

Residential–Village (R-V) zone	8,000 square feet
Residential–Urban (R-U) zone	20,000 square feet
Residential–Rural (R-RL), Residential–Suburban (R-S)	
Residential–Kittery Point Village (R-KPV) zones	40,000 square feet
Commercial (C1), (C2), (C3), Industrial (IND), Business-Local (B-L)	
and Business-Local 1 (B-L1) zones	60,000 square feet
Residential-Rural Conservation (R-RLC) zone	80,000 square feet
Business-Park (B-PK) zone	120,000 square feet

b. Minimum land area per dwelling unit by base zone, within the

Residential–Village (R-V) zone	8,000 square feet
Business-Park (B-PK) zone	10,000 square feet
Residential–Urban (R-U), Business-Local (B-L) and	
Business-Local 1 (B-L1) zones	20,000 square feet

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- |                                                                                                                                 |                     |
|---------------------------------------------------------------------------------------------------------------------------------|---------------------|
| Mixed Use (M-U), Residential–Rural (R-RL),<br>Residential–Suburban (R-S) and<br>Residential–Kittery Point Village (R-KPV) zones | 40,000 square feet. |
| Residential-Rural Conservation (R-RLC) zone                                                                                     | 80,000 square feet. |
- c. Minimum Shore frontage by base zone per lot and dwelling unit
- |                                                                                                                                                                             |          |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------|
| Residential-Village (R-V) and Residential Urban (R-U) zones                                                                                                                 | 50 feet  |
| Mixed Use (M-U), Commercial (C1), (C2), (C3), Industrial (IND),<br>Business-Park (B-PK), Business-Local (B-L) and<br>Business-Local 1 (B-L1) zones (shore frontage per lot) | 150 feet |
| (shore frontage per dwelling unit)                                                                                                                                          | 50 feet  |
| Residential-Rural (R-RL), Residential-Suburban (R-S),<br>and Residential-Kittery Point Village (R-KPV)<br>zones (shore frontage per lot)                                    | 150 feet |
| (shore frontage per dwelling unit)                                                                                                                                          | 100 feet |
| Residential-Rural Conservation (R-RLC) zone (per lot and dwelling unit)                                                                                                     | 250 feet |
- d. The total footprint of areas devegetated for structures, parking lots and other impervious surfaces, must not exceed twenty (20) percent of the lot area, including existing development, except in the following zones:
- i. Mixed Use -Badgers Island (MU-BI) and Mixed Use Kittery Foreside (MU-KF) Zones, where the maximum lot coverage is sixty (60) percent. The Board of Appeals may approve a miscellaneous appeal application to increase allowable lot coverage in the Mixed Use -Badgers Island (MU-BI) zone to seventy (70) percent where it is clearly demonstrated that no practicable alternative exists to accommodate a water-dependent use.
- ii. Commercial (C1, C-2, C-3), Business – Local (B-L and B-L1), and Industrial (IND) Zones where the maximum lot coverage is seventy (70) percent.
- iii. Notwithstanding the above limits, vegetated surfaces must exceed fifty (50) percent of the lot area when the lot, being no greater in size than ten thousand (10,000) square feet, is situated in both the Residential - Urban Zone (R-U) and the Shoreland Overlay Zone.
2. Principal and Accessory Structures – Setbacks and Development.
- a. All new principal and accessory structures (except certain patios and decks per Section 16.3.2.17.D.2.b, must be set back as follows:
- i. At least one hundred (100) feet, horizontal distance, from the normal high water line of any water bodies, tributary streams, the upland edge of a coastal wetland, or the upland edge of a freshwater wetland, and seventy-five (75) feet, horizontal distance, from the normal high-water line of any water bodies, or the upland edge of a wetland on the Mixed Use - Badgers Island and the Kittery Foreside Zones, unless modified according to the terms of Sections 16.3.2.14.D & E and 16.3.2.15.D & E., except that in the Commercial Fisheries/Maritime Uses Overlay Zone there is no minimum setback requirement. In the Resource Protection Overlay Zone the setback requirement is 250 feet, horizontal distance, except for structures, roads, parking spaces or other regulated objects specifically allowed in the zone, in which case the setback requirements specified above apply.

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- ii. The water body, tributary stream, or wetland setback provision does not apply to structures which require direct access to the water body or wetland as an operational necessity, such as piers and retaining walls, nor does it apply to other functionally water-dependent uses.
- b. Accessory patios or decks no larger than five hundred (500) square feet in area must be set back at least seventy-five (75) feet from the normal high water line of any water bodies, tributary streams, the upland edge of a coastal wetland, or the upland edge of a freshwater wetland. Other patios and decks must satisfy the normal setback required for principal structures in the Shoreland Overlay Zone.
- c. If there is a bluff, setback measurements for principal structures, water and wetland must be taken from the top of a coastal bluff that has been identified on Coastal Bluff maps as being “highly unstable” or “unstable” by the Maine Geological Survey pursuant to its “Classification of Coastal Bluffs” and published on the most recent Coastal Bluff map. If the applicant and Code Enforcement Officer are in disagreement as to the specific location of a “highly unstable” or “unstable” bluff, or where the top of the bluff is located, the applicant is responsible for the employment a Maine Registered Professional Engineer, a Maine Certified Soil Scientist, or a Maine State Geologist qualified to make a determination. If agreement is still not reached, the applicant may appeal the matter to the Board of Appeals.
- d. Public access to the waterfront must be discouraged through the use of visually compatible fencing and/or landscape barriers where parking lots, driveways or pedestrian routes abut the protective buffer. The planting or retention of thorny shrubs, such as wild rose or raspberry plants, or dense shrubbery along the perimeter of the protective buffer is encouraged as a landscape barrier. If hedges are used as an element of a landscape barrier, they must form a solid continuous visual screen of at least three feet in height immediately upon planting.
- e. On a nonconforming lot of record on which only a residential structure exists, and it is not possible to place an accessory structure meeting the required water body, tributary stream or wetland setbacks, the Code Enforcement Officer may issue a permit to place a single accessory structure, with no utilities, for the storage of yard tools and similar equipment. Such accessory structure must not exceed eighty (80) square feet in area nor eight (8) feet in height, and must be located as far from the shoreline or tributary stream as practical and meet all other applicable standards, including lot coverage and vegetation clearing limitations. In no case will the structure be allowed to be situated closer to the shoreline or tributary stream than the existing principal structure.
- f. The lowest floor elevation or openings of all buildings and structures, including basements, must be elevated at least one foot above the elevation of the 100-year flood, the flood of record, or in the absence of these, the flood as defined by soil types identified as recent flood-plain soils.
- g. The total footprint of areas devegetated for structures, parking lots and other impervious surfaces, must not exceed twenty (20) percent of the lot area, including existing development, except in the following zones:
  - i. Badgers Island and Kittery Foreside Zones, where the maximum lot coverage is sixty (60) percent. The Board of Appeals may approve a miscellaneous appeal application to increase allowable lot coverage in the Badgers Island district to seventy (70) percent where it is clearly demonstrated that no practicable alternative exists to accommodate a water-dependent use.
  - ii. Commercial (C-1, C-2, C3), Mixed Use (MU), Business – Local (B-L and B-L1), and Industrial (IND) Zones where the maximum lot coverage is seventy (70) percent.

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Notwithstanding the above limits, non-vegetated surfaces must not exceed fifty (50) percent of the lot area when the lot, being no greater in size than ten thousand (10,000) square feet, is situated in both the Residential - Urban Zone (R-U) and the Shoreland Overlay Zone

h. Stairways or similar structures may be allowed with a permit from the Code Enforcement Officer, to provide shoreline access in areas of steep slopes or unstable soils provided the:

- i. structure is limited to a maximum of four feet in width;
- ii. structure does not extend below or over the normal high-water line of a water body or upland edge of a wetland (unless permitted by the Department of Environmental Protection pursuant to the Natural Resources Protection Act, 38 M.R.S. §480-C); and
- ii. applicant demonstrates that no reasonable access alternative exists on the property.

**16.3.2.18 Commercial Fisheries/Maritime Activities Overlay Zone OZ-CFMU.**

**A. Purpose.**

1. The purpose of the Commercial Fisheries/Maritime Uses Overlay Zone is to provide for the development and expansion of water-dependent commercial fisheries/maritime activities. Commercial fisheries/maritime activities and other areas suitable for functionally water-dependent uses, considers:

- a. Shelter from prevailing winds and waves;
- b. Slope of the land within two hundred fifty (250) feet, horizontal distance, of the normal high-water line;
- c. Depth of the water within one hundred fifty (150) feet, horizontal distance, of the shoreline;
- d. Available support facilities including utilities and transportation facilities; and
- e. Compatibility with adjacent upland uses.

2. Authority.

These provisions have been prepared in accordance with the provisions of 38 M.R.S. §435-449.

3. Applicability and Boundaries.

The provisions of this Section apply to all uses, lots and structures within areas where the existing predominant pattern of development is consistent with the allowed uses for this overlay zone, where consistent with dimensional requirements of the underlying base zone, and where the active use of lands, buildings, wharves, piers, floats, or landings with the principal intent of such activity is the production of income by an individual or legal business entity through the operation of a vessel(s) as shown on the Zoning Map. The activity may be either a principal or accessory use as defined in this Code.

**B. Permitted Uses.**

Functionally water dependent commercial fisheries/marine uses.

**C. Special Exception Uses.** None

**D. Standards.**

Dimensional standards of the underlying base and overlay zone(s).

**E. Prohibited Uses.**

All permitted uses in the base zones including R-KPV, R-U, R-S, IND, and MU-KF except as permitted herein.



**16.3.2.19 Resource Protection Overlay Zone OZ-RP.**

**A. Purpose.**

The purposes of this zone are to further the maintenance of safe and healthful conditions; prevent and control potential water pollution sources; protect spawning grounds, fish, aquatic life, bird and other wildlife habitat; and conserve shore cover, visual as well as actual point of access to inland and coastal waters and natural beauty.

**1. Authority.**

These provisions have been prepared in accordance with the provisions of 38 M.R.S. §435-449.

**2. Applicability and Boundaries.**

The provisions of this Section apply to all uses, lots and structures within areas where the existing conservation and accessory development is consistent with the allowed uses for this zone. The Resource Protection Overlay Zone includes areas where development would adversely affect water quality, productive habitat, biological ecosystems, or scenic and natural values. This includes the following areas when they also occur within the limits of the Shoreland Overlay Zone, exclusive of a Stream Protection Area; except currently developed areas and areas that meet the criteria for Commercial Fisheries/Maritime Uses:

**a. Waterfowl and Wading Bird Habitat/Water Body Related Wetland Areas**

Land areas within 250 feet, horizontal distance, of the upland edge of freshwater wetlands, salt marshes and salt meadows, and wetlands associated with rivers, which are rated "moderate" or "high" value waterfowl and wading bird habitat, including nesting and feeding areas as identified as of December 31, 2008, and salt marshes and salt meadows as identified as of January 1, 1973, by the Maine Department of Inland Fisheries and Wildlife (MDIF&W). For the purposes of this Section "wetlands associated with rivers" means: areas characterized by non-forested wetland vegetation and hydric soils that are contiguous with a river, and have a surface elevation at or below the water level of the river during the period of normal high water. "Wetlands associated with rivers" are considered to be part of that river.

**b. Steep Slope Areas**

1. Land areas that have two or more contiguous acres of land where the slopes are 20% or greater; and
2. Land areas along rivers subject to severe bank erosion, undercutting, or river bed movement, and
3. Land adjacent to tidal waters which are subject to severe erosion or mass movement, such as steep coastal bluffs.

**c. Independent Wetland Areas.**

Land areas of two (2) or more contiguous acres supporting wetland vegetation and hydric soils, which are not part of a freshwater or coastal wetland as defined, and which are not surficially connected to a water body during the period of normal high water.

**d. Floodplain Areas.**

This includes areas along rivers, areas adjacent to tidal waters and other areas susceptible to flooding as defined as being located within the 100 year floodplain as designated on the FEMA Flood Insurance Rate Maps or Flood Hazard Boundary Maps, or the flood of record, or in the absence of these, by soil types identified as recent floodplain soils.

**B. Permitted and Special Exception Land Use.**

Land uses within each base zone that are overlaid by the Resource Protection Overlay Zone include:

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1. Residential - Rural Zone (R-RL).
  - a. Permitted Uses.
    - i. Public open space recreational uses.
    - ii. Individual private campsite.
  - b. Special Exception Uses.
    - i. Single family dwelling or modular home excluding mobile home;
    - ii. School or other institution of educational, religious, philanthropic, fraternal or social nature, less than 6,000 square feet;
    - iii. Any agricultural building or use, except sawmill, piggery, or the raising of poultry for commercial purposes;
    - iv. Accessory use and buildings;
    - vi. Home occupations;
    - vii. Public utility facilities including substation, pumping stations and sewage treatment facilities.
2. Residential – Suburban Zone (R-S).
  - a. Permitted Uses.:
    - i. Public open space recreational uses.
  - b. Special Exception Uses.
    - i. Single family dwelling or mobile home;
    - ii. Agricultural building or use, except sawmill, piggery, or the raising of poultry for commercial purposes;
    - iii. Accessory use and building;
    - iv. Home occupations;
    - v. Public utility facilities including substation, pumping stations and sewage treatment facilities;
3. Residential - Kittery Point Village Zone (R-KPV).
  - a. Permitted Uses.
    - i. Public open space recreational uses.
  - b. Special Exception Uses.
    - i. Single family dwellings, excluding mobile homes;
    - ii. Any agricultural building or use, except a sawmill, piggery, or the raising of poultry for commercial purposes;
    - iii. Accessory uses and buildings;
    - iv. Home occupations;
    - v. Public utility facilities including substation, pumping stations and sewage treatment facilities;
4. Residential – Urban Zone (R-U).
  - a. Permitted Uses.
    - i. Public open space recreational uses.
  - b. Special Exception Uses.
    - i. Single family dwelling including manufactured housing ;
    - ii. Accessory uses and buildings;

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- iii. Home occupations.
  - iv. Public utility facilities including substation, pumping stations and sewage treatment facilities.
5. Residential - Village Zone (R-V).
- a. Permitted Uses.
    - i. None.
  - b. Special Exception Uses.
    - i. Single family dwelling and manufactured housing;
    - ii. Accessory buildings and structures;
    - iii. Home occupations;
    - iv. Public utilities including substation, pumping stations and sewage treatment facilities.
6. Residential – Rural Conservation Zone (R-RLC).
- a. Permitted Uses.
    - i. Timber harvesting;
    - ii. Public recreation;
  - b. Special Exception Uses.
    - i. Single family dwelling including modular homes;
    - ii. Any agricultural building or use except sawmill, piggery, or the raising of poultry for commercial purposes;
    - iii. Accessory uses and buildings;
    - iv. Home occupations.
    - v. Public and private open space recreational uses exclusive of drive-in theaters and golf courses;
    - vi. Public utility facilities including substations, pumping stations, and sewage treatment facilities;
7. Conservation (CON).
- a. Permitted Uses.
    - i. Existing land conservation uses.
    - ii. Public recreation.
    - iii. Accessory structure including restrooms.
  - b. Special Exception Uses.
    - i. Public facility
8. Business – Local (B-L).
- a. Permitted Uses.
    - i. Public open space recreational uses.
  - b. Special Exception Uses.
    - i. Single family dwelling including modular homes;
    - ii. Accessory uses and buildings;
    - iii. Home occupations;
    - iv. Aquaculture;
    - v. Public utility facilities including substation, pumping stations, and sewage treatment facilities.

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### 9. Business – Local Zone (B-L1).

- a. Permitted Uses.
  - i. Public open space recreational uses.
- b. Special Exception Uses.
  - i. Single family dwelling including modular homes and excluding mobile homes;
  - ii. Accessory uses and buildings;
  - iii. Home occupations;
  - iv. Public utility facilities including substation, pumping stations, and sewage treatment facilities;

### 10. Business – Park Zone (B-PK).

- a. Permitted Uses – Cluster and Non-Cluster Development.
  - i. Public open space recreational use.
- b. Special Exception Uses -- Cluster Development.
  - i. Public utility facilities including substations, pumping stations, and sewage treatment facilities;
- c. Special Exception Uses - Non-Cluster. Special exceptions uses for projects not designed as a cluster mixed-use development include:
  - i. Accessory uses and buildings;

### 11. Commercial – 1 Zone (C-1).

- a. Permitted Uses.
  - i. Public open space recreational uses;
- b. Special Exception Uses.
  - i. Accessory uses and buildings;
  - ii. Home occupations;
  - iii. Public utility facilities including substations, pumping stations, and sewage treatment facilities;
  - iv. Research and development;
  - v. Aquaculture.

### 12. Commercial – 2 Zone (C-2).

- a. Permitted Uses.
  - i. Public open space recreational uses;
- b. Special Exception Uses.
  - i. Accessory uses and buildings including minor or major home occupations;
  - ii. Home occupations;
  - iii. Public utility facilities including substations, pumping stations, and sewage treatment facilities;
  - iv. Aquaculture;

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### 13. Commercial – 3 Zone (C-3).

- a. Permitted Uses.
  - i. Public open space recreational uses;
- b. Special Exception Uses.
  - i. Accessory uses and buildings;
  - ii. Home occupations;
  - iii. Public utility facilities including substations, pumping stations, and sewage treatment facilities;
  - iv. Aquaculture;

### 14. Industrial Zone (IND).

- a. Permitted Uses.
  - i. Research facilities.
- b. Special Exception Uses.
  - i. Accessory uses and buildings;
  - ii. Home occupations.
  - iii. Municipal and governmental uses;
  - iv. Public utility facilities including substations, pumping stations, and sewage treatment plants.

### 15. Mixed Use Zone (MU).

- a. Permitted Uses.
  - i. Public open space or recreation;
  - ii. Timber harvesting.
- b. Special Exception Uses.
  - i. Single-family dwelling on lots of record as of April 1, 2004;
  - ii. Any agricultural building or use except sawmill, piggery, or the raising of poultry for commercial purposes;
  - iii. Accessory uses and buildings;
  - iv. Home occupations;
  - v. Public utility facilities including substations, pumping stations, and sewage treatment facilities.

### 16. Mixed Use - Badger's Island Zone (MU-BI).

- a. Permitted Uses.
  - i. Public open space and recreational uses;
  - ii. Aquaculture;
- b. Special Exception Uses.
  - i. Single family dwelling excluding mobile homes;
  - ii. Accessory buildings and uses;
  - iii. Home occupations;
  - iv. Public utility facilities, including substations, pumping stations, and sewage treatment facilities;

### 17. Mixed Use- Kittery Foreside Zone (MU-KF).

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- a. Permitted Uses.
  - i. Public open space recreational uses;
- b. Special Exception Uses.
  - i. Single family dwelling excluding mobile homes;
  - ii. Accessory uses including church rectory;
  - iii. Home occupations;
  - iv. Public utility facilities, including substations, pumping stations, and sewage treatment facilities.

### 18. Transportation – Maine Turnpike T-MT.

- a. Permitted Uses.

Permitted and special exception land uses include the highway, information center and other uses as authorized by the State.
- b. Special Exception Uses. None

### **C. Special Exception Uses.** (included in Section B, above)

### **D. Standards.**

1. The Design and Performance Standards of Chapters 16.8 and 16.9 and Shoreland Overlay Zone provisions of Section 16.3.2.17 apply where applicable in addition to the following standards whichever is the most restrictive.
2. Dimensional standards such as front, side and rear yards, building coverage, height and the like are the same as those in the underlying zone.
3. Road construction and parking facilities are allowed in the Resource Protection Overlay Zone only where no reasonable alternative route or location is available outside the Resource Protection Overlay Zone, in which case a permit or site plan or subdivision plan approval is required by the Planning Board.
4. Clearing or removal of vegetation for uses, other than timber harvesting as limited per Article V of Chapter 16.9, Design and Performance Standards, in a Resource Protection Overlay Zone, is prohibited within the strip of land extending one hundred (100) feet, horizontal distance, inland from the normal high-water line, except to remove safety hazards. Elsewhere, in a Resource Protection Overlay Zone the cutting or removal of vegetation is limited to that which is necessary for uses expressly authorized in the Resource Protection Overlay Zone.

## **Chapter 16.4 ADMINISTRATION and ENFORCEMENT**

### **16.4.1 Purpose.**

This chapter describes general administration and enforcement of the requirements of this Code.

### **16.4.2 Town Planner.**

#### **16.4.2.1 Responsibilities.**

The Town Planner is responsible for the overall planning in accordance with applicable federal, state and municipal law, codes and ordinances. The Planner is responsible for all municipal planning functions, including the administration of this Code, and the implementation of the Kittery Growth Management Program. These functions include but are not limited to land and water use planning; providing technical assistance and staff support to the Planning Board; researching, developing, coordinating and administering land and water use and planning related projects; maintaining accurate planning records; and, interacting with members of the public involved with the planning process.

#### **16.4.2.2 Plan Submission.**

- A. All plan submission requirements for an application for land/water area use and development are to be submitted to the Planner.
- B. The Planner must review all plan submission contents to ascertain that they meet the requirements of this Code before they are delivered for review or consideration by the Planning Board.
- C. The Planner, upon confirmation of a plan's submission contents sufficiency, is to place the application on the Board's agenda for a scheduling hearing.

**NOTE:** Planner confirmation does not constitute substantive review under Maine law, which commences at the first public hearing for an application held by the Planning Board.

#### **16.4.2.3 Staff Coordination.**

The Planner is to coordinate with appropriate municipal department heads to insure they have received required plan information for the performance of their duties under this title.

#### **16.4.2.4 Reporting.**

The Planner must report the status of all active plans (received, pending, under review, and approved not built—past expiration date) to the Board, monthly.

### **16.4.3 Code Enforcement Officer (CEO).**

#### **16.4.3.1 Responsibility.**

It is the duty of the Code Enforcement Officer or other person duly authorized by the Town to enforce the provisions of this Code.

#### **16.4.3.2 Permits.**

The CEO is to issue required permits for building, occupancy, plumbing, electrical, or such other as may be required.

**16.4.3.3 Appeal/Request Initiation.**

The CEO must initiate the forms required for appeals/requests to the Board of Appeals.

**16.4.3.4 Inspection.**

The CEO must inspect all buildings, developments, subdivisions, and such other facilities/uses within the requirements of this Code.

**16.4.3.5 Business Use Changes.**

The Planner and the Code Enforcement Officer are to review and approve, or refer to the Planning Board for action, all business use changes which occur that fall below Planning Board review thresholds as outlined in Sections 16.10.3.2 and 16.10.3.6. Approval must be based on compliance with all requirements of this Code.

**16.4.4 Enforcement—General.**

If the Code Enforcement Officer (CEO) finds any of the provisions of this Code are being violated, the CEO must notify by certified mail, return receipt requested, the person responsible for such violations, indicate the nature of the violation, and order the action necessary to correct it. The CEO must order discontinuance of illegal use of land, buildings or structures, removal of illegal buildings or structures or of additions, alterations or structural changes thereto; a discontinuance of any illegal work being done; or take any other action authorized by this title to insure compliance with or to prevent violations of its provisions.

(Ordained 9/26/11; effective 10/27/11)

**16.4.4.1 Inspection of Required Improvements.**

A. At least five days prior to commencing each major phase of construction of required improvements, the applicant or duly authorized representative must notify the CEO, in writing, of the time when construction of such improvements is proposed to commence, so inspection may be made to ensure all specifications are met during the construction of the required improvements, and to insure the satisfactory completion of improvements and utilities required by the Planning Board.

B. If the inspecting official finds, upon inspection of the required improvements, that any of the required improvements have not been constructed in accordance with the Planning Board approved-plans and specifications filed by the developer, the inspecting official must report, in writing, to the Planning Board, CEO and the developer. The Town shall take any steps necessary to preserve the municipality's rights.

**16.4.4.2 Modifications to an Approved Plan.**

Any modification to an approved plan may be considered for approval under Section 16.10.3.1 General Development, Site and Subdivision Plans review, 16.10.3.2, Other Development Review and/or 16.10.9.1.2 Plan Revisions or 16.10.9.3, Modifications to an Approved Plan.

(Ordained 9/26/11; effective 10/27/11)

**16.4.4.3 Record Keeping in Shoreland and Resource Protection Overlay Zones.**

The Code Enforcement Officer is to keep a complete record of all essential transactions of development in the Shoreland and Resource Protection Overlay Zones, including applications submitted, permits granted or denied, variances granted or denied, revocation actions, revocation of permits, appeals, court actions, violations investigated, violations found, and fees collected. On a biennial basis, a summary of this record must be submitted to the Director of the Bureau of Land and Water Quality within the Department of Environmental Protection.



**16.4.4.4 Stormwater and Erosion Control Inspection.**

A. During October-November of each year in which construction for grading, paving and landscaping occurs on a development site, the Town will, at the expense of the developer, cause the site to be inspected by a qualified individual. By December 1st, the inspector must submit a site report to the Town Planner that describes the inspection findings and indicates whether stormwater and erosion control measures (both temporary and permanent) are in place and properly installed. The report must include a discussion and recommendation on any and all problem areas encountered.

B. After major construction activities have been completed on a development site, the developer must, on or by July 1 of each year, provide a completed and signed certification to the Code Enforcement Officer per Section 16.8.8.2, Post-Construction Stormwater Management.

**16.4.4.5 Subdivision Lot Monumentation Prior to Sale.**

Prior to the sale of any approved subdivision lot, the subdivider must provide the Planner with a letter from a registered land surveyor, stating all monumentation shown on the plan has been installed.

(Ordained 9/26/11; effective 10/27/11)

**16.4.4.6 Street Acceptance as Town Way.**

Upon completion of construction of any street/road intended for proposal for acceptance as a Town way, a written certification that such way meets or exceeds the design and construction standards of this Code, signed by a professional engineer registered by the state of Maine, prepared at the developer's expense, must be submitted to the Board. If underground utilities are laid in such way, the developer must also provide written certification from the servicing utility(ies), that such installation was in a manner acceptable to the utility. The Board is to review the proposal and forward a recommendation to the Town Council regarding acceptance.

**16.4.4.7 Maintenance of Improvements.**

The developer, or owner, is required to maintain all improvements and provide for snow removal on streets and pedestrian ways/sidewalks unless and until the improvement has been accepted by the Town Council.

(Ordained 9/26/11; effective 10/27/11)

**16.4.4.8 Subdivision Plan Filing, Recording.**

Prior to recording a subdivision plan in the York County Registry of Deeds, a subdivider must have acquired Planning Board approval in accordance with this title.

**16.4.4.9 Subdivision Land Conveyance.**

No person, firm, corporation, or other legal entity may convey, offer, or agree to convey any land in a subdivision which has not been approved by the Planning Board, recorded in the York County Registry of Deeds and shown on the final plan as a separate lot.

(Ordained 9/26/11; effective 10/27/11)

**16.4.4.10 Subdivision Frontage Street Completion.**

No lot in a subdivision may be sold, leased, or otherwise conveyed before the street upon which such lot has frontage, is completed to rough grade standard, up to, and including the entire frontage of the lot. Prior to the issuance of certificates of occupancy by the CEO, the street from which the unit is accessed must be completed in accordance with Chapter 16.8.

**16.4.4.11 Utility Service.**

Prior to the installation of any public utility to a site, the developer must have obtained all necessary approvals from the appropriate local, state or federal authority.

**16.4.4.12 Removal of Fire Debris or Other Ruins.**

The owner or occupant of any land in any zone shall not allow fire debris or other ruins to remain on site, but shall remove the same within six months of the date such debris or ruins were created unless extended by the CEO for good and sufficient reason. The accumulation and or storage of hazardous materials and/or chemicals, refuse, junk cars or other ruins constitutes a violation. When a violation is discovered, the Code Enforcement Officer will order compliance by written notice of violation to the owner of any land in any zone requesting removal of such violation within six months of the date of written notice. An extension of time to correct may be made by the CEO for good and sufficient reason.

**16.4.4.13 Grading/Construction Final Plan Required.**

Grading or construction of roads, grading of land or lots, or construction of buildings which require a final plan as provided in this title, until such time as the final plan has been duly prepared, submitted, reviewed, approved and endorsed as provided in this title, is prohibited until the original copy of the final plan so approved and endorsed has been duly recorded in the York County Registry of Deeds.

**16.4.4.14 Non-stormwater Discharge.**

No person, except where exempted in Chapter 8.10, may create, initiate, originate or maintain a non-stormwater discharge to the storm drainage system. Such non-stormwater discharges are prohibited notwithstanding the fact that the municipality may have approved the connections, drains or conveyances by which a person discharges unallowable non-stormwater discharges to the storm drainage system.

**16.4.4.15 Nuisances.**

Any violation of this Code is deemed to be a nuisance.

**16.4.4.16 Erosion Control Debris.**

The owner or occupant of any land in any zone must not allow erosion control materials such as plastic erosion control fences and related stakes or other materials to remain on the site, but must remove the same within six months of the date such erosion control materials were installed, or the date when no longer required, whichever is later. When a violation is discovered, the Code Enforcement Officer will order compliance by written notice of violation to the owner of any land in any Zone requesting removal of such violation within 30 days of the date of written notice. An extension of time to correct may be made by the Code Enforcement Officer for good and sufficient reason.

(Ordained 9/26/11; effective 10/27/11)

**16.4.5 Violations and enforcement.**

When any violation of any provision of this Code or Chapter 8.10 Non-stormwater Discharge Ordinance is found to exist, the Town Attorney, or the CEO as provided by MRCP Rule 80K and any provisions of this Code and relevant statute, with the advice and consent of the Town manager, are authorized and directed to institute any and all appropriate actions and proceedings either legal or equitable that may be appropriate or necessary for the enforcement of the provisions of this Code, the same to be brought in the name of the Town.

**16.4.5.1 Owner or Persons Liable.**

Any person(s), firm, corporation, or legal entity being the owner of or having control or use of any buildings or premises, who participates in, assists, directs, creates or maintains any situation that is contrary to the requirements of this Code is responsible for the violation and is subject to the penalties and the remedies herein provided.

**16.4.5.2 Applications for Permits or Approvals Involving Sites with a Violation.**

An application for a “building/regulated activity permit” (see Chapter 16.5), certificate of occupancy permit, sign permit, subdivision approval or development review approval will be denied for any property where a violation exists until such violation has been corrected or resolved.

**16.4.5.3 Purpose of Enforcement Provisions.**

The purpose of these title enforcement provisions is to provide an alternative method in addition to Section 16.4.4 for enforcing and securing compliance with the provisions of this Code in a just, speedy and cost-effective manner, and thereby to protect, preserve and enhance the public health, safety and general welfare.

**16.4.5.4 Notice of Violation and Order (Notice).**

A. It is the duty of the CEO to serve written notice on the landowner, or the landowner’s agent, and any other person or entity responsible (hereafter termed “violator”) for such violation. The notice must describe the nature of the violation, include a specific reference to the provision(s) of this Code and/or state statute violated, and direct the discontinuance of the illegal action or condition. The notice must also contain an order setting forth the action necessary to correct the violation specifying a time period for correction as provided in Section 16.4.5.8 and must set forth a fine to be imposed as authorized by Section 16.4.5.9 and/or 30-A M.R.S. §4452.

B. Notwithstanding any other provision of Chapter 16.4, when the notice involves a violation of this Code pertaining to Shoreland or Resource Protection zoning, or 30-A M.R.S. §4452(3), the notice must also set forth, in addition to the fine to be imposed, an order of remediation or other corrective action(s) consistent with and in compliance with 30-A M.R.S. §4452 deemed necessary by the CEO to correct or mitigate the violation to the affected area(s) unless the correction or mitigation would result in a threat or hazard to public health or safety, substantial environmental damage, or a substantial injustice.

C. All proposed plans for corrective action submitted by the violator must comply with the standards set forth in Section 16.4 where applicable and 30-A M.R.S. §4452(3). The acceptance by the CEO of a violator’s proposed plan(s) of correction or mitigation will not relieve the violator of the requirement to pay the fine set forth in the notice.

D. The notice must also advise the violator of any right to appeal to the Board of Appeals with respect to the CEO’s determination that a violation of this Code and/or 30-A M.R.S. §4452 exists for which the violator is responsible.

E. Additionally, if there is a violation of Chapter 8.10, the enforcement authority will order compliance by written notice of violation to that person indicating the nature of the violation and ordering the action necessary to correct it, including, without limitation:

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1. The elimination of non-stormwater discharges to the storm drainage system, including, but not limited to, disconnection of the premises from the MS-4;
2. The cessation of discharge practices, or operations in violation of this Section;
3. At the person's expense, the abatement or remediation (in accordance with best management practices in DEP rules and regulations) of non-stormwater discharges to the storm drainage system and the restoration of any affected property; and/or
4. The payment of fines, of the municipality's remediation costs and of the municipality's reasonable administrative costs and attorneys' fees and costs. If abatement of a violation and/or restoration of affected property is required, the notice will set forth a deadline within which such abatement or restoration must be completed.

### **16.4.5.5 Procedure to Serve Notice of Violation and Order.**

The notice pursuant to Section 16.4.5.4 must either:

- A. Be served in hand to the violator by the CEO or a person duly authorized by the CEO;
- B. Be left at the violator's dwelling house or usual place of abode with a person of suitable age and discretion then residing therein or with an agent authorized by appointment or by law to receive service of process;
- C. Be mailed by certified U.S. mail, return receipt requested, to the violator's last known address. If the return receipt is not returned, the notice will be conclusively presumed to have been served. Such notice sent by regular U.S. mail if not returned or undeliverable is conclusively deemed to be received by the addressee on the fifth day following the date of mailing; or
- D. Any procedure for service of process authorized by Rule 4 of the Maine Rules of Civil Procedure (MRCP).

### **16.4.5.6 Appeal of Notice of Violation and Order.**

- A. The violator served with a notice of violation and order may appeal the notice of violation and order to the Board of Appeals by filing an administrative appeal application in accordance with Section 16.6.5.1
- B. If a completed appeal is not filed within thirty (30) days of receipt of the violation and order, then the notice of violation and order is final and the violator is subject to the penalty contained therein. If a completed appeal application is timely filed, the Board of Appeals (BOA) must hold a public hearing pursuant to Section 16.6.5.2 and render a decision to uphold, modify or reverse the violation notice and order issued by the CEO. The Board must set forth its findings of fact and conclusions of law in support of its decision and give notice of the same to the violator.
- C. Any adverse decision of the BOA may be further appealed to the Superior Court pursuant to the provisions of Rule 80(B) of the Maine Rules of Civil Procedure (MRCP). If a timely appeal is taken, the notice of violation and order is stayed. If no appeal is taken, or any appeal once taken is withdrawn or not pursued, the violation notice and order is final and enforceable as provided in the title.

**16.4.5.7 Civil Proceedings.**

If the notice of violation and order has not been corrected, and no appeal is pending before the BOA or Superior Court, or the parties have not reached a consent agreement as provided in Section 16.4.5.10, the Town Attorney, or the CEO as provided by MRCP Rule 80K, upon notice from the Town manager, may initiate any and all appropriate legal proceedings authorized in this title or state statute to compel the violator to correct the violation, pay any fine imposed, and seek whatever other relief to which the Town may be entitled. Such legal proceedings may include the initiation of a land use complaint pursuant to MRCP Rule 80K and 30-A, M.R.S. §4452 et seq., as amended.

**16.4.5.8 Time Limit for Corrective Action.**

A. The time period within which a violation must be corrected as set forth in the notice of violation and order under Section 16.4.5.4 of this Section is thirty (30) days following receipt of the notice of the violation and order unless:

1. The CEO determines a longer reasonable time limit is necessary considering the nature and extent of the work required to correct the violation.
2. The CEO determines a shorter reasonable time limit is appropriate due to the threat posed by said violation to the health, safety and welfare of the public.
3. The CEO finds the violator has been previously served a notice of violation and order for a similar violation within the last eighteen (18) months, in which case the time limit for corrective action must be no more than five days.

B. If a violator in a timely fashion files a completed administrative appeal application with the Town clerk as provided in Section 16.4.5.6, any period of time from date of receipt of such an appeal to date of decision of the BOA inclusive, is not counted as part of the cumulative time period described in this Section. If the BOA upholds the CEO's determination, the time line set forth in the notice of violation and order resumes beginning the day after the decision is rendered unless it is extended by the BOA.

**16.4.5.9 Penalties.**

A. The Code Enforcement Officer must impose the following penalties for the failure to correct a cited violation within the prescribed time set forth in the Notice:

1. Fine imposed: \$200.00 for the first seven day period the violation continues beyond the time specified for corrective action. Thereafter, each day the violation continues, a separate and specific violation with an additional minimum of \$100.00 per day penalty for each day of the continuing violation up to a maximum penalty imposed of \$2,500.00 for each specific violation or the maximum as provided by 30-A M.R.S. §4452, if greater.
2. When the Violation set forth in the Notice involves any cutting of tree(s) or other vegetation in violation of Section 16.9.2.2 or 30-A M.R.S. §4452(3), the penalty provided by this Section will be imposed from the date of notification of the violation in writing in addition to the required corrective action set forth in the Section 16.4.5.4.

B. After the time specified to correct the violation in the notice of violation and order passes, it is the responsibility of the violator to inform the Code Enforcement Officer in writing when the violation has been corrected and seek an inspection to verify the violation has been corrected. For the purposes of this Section, the violation will be assumed to have continued to exist uncorrected until the violator has informed the Code Enforcement Officer in writing that the violation has been corrected or the Code Enforcement Officer discovers through inspection of the premises that the violation has been corrected, whichever comes earlier.

**16.4.5.10 Consent Agreements.**

A. In special cases, particularly minor, unintentional violations that are unduly difficult to correct, the Town manager, with advice of the Code Enforcement Officer, is authorized to enter into a consent agreement with the violator to resolve the violation without further enforcement action or appeal. Consent agreements are not intended to allow a violator to substitute fines for corrective actions.

B. Any such violation that is allowed to continue pursuant to a consent agreement is not granted the status of a nonconforming use. Any further actions by the violator with regard to the property must comply in all respects to the existing terms and provisions of this Code.

**16.4.5.11 Payment of Civil Penalties.**

All civil penalties imposed pursuant to a notice of violation and order as provided in Section 16.4.5.4 are payable to the Town and due within thirty (30) days after the notice of violation and order becomes final. All such civil penalties not paid when due accrue interest on the unpaid penalties at the rate provided for judgments in 14 M.R.S. §1602-A. If the violator fails to pay this penalty, the penalty may be recovered by the Town in a civil action in the nature of debt.

**16.4.5.12 Fines.**

Any person, including but not limited to a property owner, an owner's agent or a contractor, who violates any provision or requirement of this Code will be penalized in accordance with this Code and 30-A M.R.S. §4452.

**16.4.6 Other Enforcement Provisions.**

In addition to the violations and enforcement provisions of Sections 16.4.4 and 16.4.5, any person, firm, corporation, or legal entity being the owner of or having control or use of any buildings or premises who violates any of the provisions of this Code, or any notice of violation and order issued by the CEO, is guilty of a civil violation and the Town has those remedies including fines as are provided and allowed by 30-A M.R.S. §4452, as amended. Each day such violation is permitted to exist after notification thereof constitutes a separate offense. All enforcement actions are to be brought in the name of the Town. All fines collected hereunder accrue to the Town.

**16.4.7 Release of Performance Guaranty.**

Before a developer may be released from any obligation required by guaranty of performance, the Board must require certification from the CEO, or appointed engineer and whatever other agencies and departments that may be involved, to the effect that all improvements have been satisfactorily completed in accordance with all applicable standards, state and local codes and the approved plans.

**16.4.8 Enforcement and Penalties.**

A. It is the duty of the Code Enforcement Officer to enforce the provisions of Chapter 16.9, Article VIII, Floodplain Management, pursuant to 30-A M.R.S. §4452.

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B. The penalties contained in 30-A M.R.S. §4452 apply to any violation of this article.

C. In addition to any other actions, the Code Enforcement Officer, upon determination that a violation exists, is to submit a declaration to the Administrator of the Federal Insurance Administration requesting a denial of flood insurance. The valid declaration is to consist of:

1. The name of the property owner and address or legal description of the property sufficient to confirm its identity or location;
2. A clear and unequivocal declaration that the property is in violation of a cited state or local law, regulation or ordinance;
3. A clear statement that the public body making the declaration has authority to do so and a citation to that authority;
4. Evidence that the property owner has been provided notice of the violation and the prospective denial of insurance; and
5. A clear statement that the declaration is being submitted pursuant to Section 1316 of the National Flood Insurance Act of 1968, as amended.

(Ordained 9/26/11; effective 10/27/11)

## **Chapter 16.5 BUILDING/REGULATED ACTIVITY PERMITS**

### **16.5.1 Purpose.**

Building/regulated activity permits and certificates of occupancy are required to control development to insure that such development conforms to this Code. This chapter outlines the requirements of this process.

### **16.5.2 Requirements.**

#### **16.5.2.1. Permit.**

No building, including municipal buildings, or structure may be erected, moved, added to or otherwise structurally altered and no regulated activity is to commence without a permit, issued by the Code Enforcement Officer and in compliance with all applicable state and federal requirements.

#### **16.5.2.2 Conformity.**

No building/regulated activity permit may be issued except in conformity with this title, except after written order of the Board of Appeals.

#### **16.5.2.3 Permit Records.**

The CEO must maintain a public record of all building/regulated activity permits and applications thereof.

#### **16.5.2.4 Permit Period.**

A permit expires if no substantial work has been commenced within six months from date of issue. A permit expires if work is not substantially complete within two years from date of issue. Expired permits may be renewed upon application and payment of a renewal fee.

#### **16.5.2.5 Permit Threshold.**

A permit is required if the activity involves any of the following thresholds as determined by the Code Enforcement Officer:

1. Fair market value of the work is greater than two thousand dollars (\$2,000.00);
2. Changes to electric, plumbing or septic systems;
3. Increase in coverage;
4. Construction of a building or expansion of a structure;
5. Structural alteration;
6. Change in use or new business occupancy;
7. Erection or expansion of signage;
8. Installation or expansion of piers and docks;
9. An activity that requires inspection by the CEO to determine compliance with this title;
10. Creates one or more acres of disturbed area; or
11. Structure demolition (Ordained 9/24/12; effective 10/25/12)

### **16.5.3 Application.**

#### **16.5.3.1 Plans.**

A. All applications for building/regulated activity permits are to be accompanied by plans showing the actual dimensions and shape of the lot to be built upon, including but not limited to property and setback lines; the



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exact sizes and locations and dimensions of the proposed building or alteration of any existing structures and the proposed sewage disposal systems as designed by a Maine-licensed site evaluator.

The Code Enforcement Officer may waive the requirement for plans in the case of minor interior alterations, which in the CEO's opinion do not result in a change in use. The application is to include such other information as lawfully may be required by the Code Enforcement Officer to determine conformance with and provide for the enforcement of this Code. All plans and correspondence are to include the map and lot designation of the property concerned, in the upper right-hand corner.

B. At any time between the initial request for a building/regulated activity permit and the granting of final occupancy certificate the CEO or designated representative is to have access to the subject property and structures without obtaining prior permission, written or oral, from the property owner or applicant, except when a temporary occupancy permit has been given to the dwelling owner or applicant.

### **16.5.3.2 Drainage and Sewage Disposal.**

Wherever on-site subsurface disposal is contemplated, the approval of building/regulated activity permit applications are subject to evidence of satisfactory subsurface soil conditions for drainage and sewage disposal, and prior obtainment of a subsurface wastewater disposal permit. Such evidence must be furnished in compliance with the Maine State Plumbing Code and Chapter 16.8.

### **16.5.3.3 Fee.**

Except for municipality permits, application for a building/regulated activity permit must be accompanied by a fee which is established by the Town Council. (See Appendix A, fee schedule.)

### **16.5.3.4 Flood Hazard Ordinance.**

Any building or structure that might be erected in an area subject to periodic flooding must meet all conditions of Chapter 15.12, relating to flood hazard permit and review procedure of this Code and the applicable Federal Emergency Management Agency (FEMA) regulation(s). No alteration of the natural contour of the land by grading or filling for any purpose is permitted in an area subject to periodic flooding.

### **16.5.3.5 Conformance to Standards.** (Ordained 5/30/12; effective 6/30/12)

A. All developments must be in conformance with the procedures, standards and requirements of this Code.

B. All work that requires a building/regulated activity permit must conform to the Maine Uniform Building and Energy Code (MUBEC), pursuant to 10 M.R.S. § 9721 *et seq*, which is adopted by the Department of Public Safety, Bureau of Building Codes and Standards, Maine Technical Building Codes and Standards Board, by rule 16-635, Chapters 1 through 6, as may be amended from time to time.

C. The following codes, standards, rules and their amendments, are in full force and effect in their entirety and are not affected by the operation of Title 16, or the MUBEC.

1. National Electrical Code® standards (NFPA 70), adopted pursuant to 32 M.R.S. § 1153-A.
2. Maine State Plumbing Codes standards adopted pursuant to 32 M.R.S. § 3403-B.
3. Standard for the Installation of Oil-Burning Equipment standards (NFPA 31), adopted pursuant to 32 M.R.S. § 2353.

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4. Flammable and Combustible Liquids Code standards (NFPA 30), adopted pursuant to 32 M.R.S. § 14804.
5. Boiler and pressure vessel standards adopted pursuant to 32 M.R.S. § 15104-A.
6. Elevator standards adopted pursuant to 32 M.R.S. § 15206.

D. National Fire Protection Association (NFPA) fire safety codes and standards adopted pursuant to 25 M.R.S. § 2452 and § 2465, as follows:

NFPA 1 - Fire Code

NFPA 101 - Life Safety Code

NFPA 54 - Fuel Gas Code

NFPA 211 - Standard for Chimneys, Fireplaces, Vents, and Solid Fuel-Burning Appliances

### **16.5.3.6 Permit Review Time Constraints.**

The Code Enforcement Officer must approve or deny an application for a building/regulated activity permit within fourteen (14) working days of receiving said application. The Town manager may approve or deny an application if no action is taken by the Code Enforcement Officer within fourteen (14) working days.

### **16.5.4 Certificate of Occupancy.**

#### **16.5.4.1 Certificate Requirement.**

It is unlawful to use or occupy or permit the use or occupancy of any building or premises, or both, or part thereof hereafter created, erected, changed, converted, or wholly or partly altered or enlarged in its use or structure until a certificate of occupancy has been issued by the Code Enforcement Officer, and endorsed to the effect that the proposed use of the building or land conforms with the requirements of this Code and all applicable state and federal requirements.

#### **16.5.4.2 Certificate Application Requirement.**

No building/regulated activity permit may be issued until an application has been made for a certificate of occupancy, and the certificate of occupancy is issued in conformity with the provisions of this Code upon completion of the work.

#### **16.5.4.3 Temporary Certificate.**

A. A temporary certificate of occupancy may be issued by Code Enforcement Officer for a period of six months during construction or alterations for partial occupancy of a building pending its completion, provided that such temporary certificate requires such conditions and safeguards as will protect the safety of the occupants and the public.

B. Commercial establishments may not be granted a temporary certificate of occupancy. Occupancy may be granted when construction is complete, all Planning Board conditions have been met, and all applicable state and local code requirements have been met to the satisfaction of the CEO. Phased construction may be approved by the Planning Board and certificate of occupancy may be issued by the CEO when phase conditions have been met.

#### **16.5.4.4 Records.**

The Code Enforcement Officer must maintain a public record of all certificates of occupancy.

**16.5.4.5 Failure to Obtain Certificate.**

Failure to obtain a certificate of occupancy is a violation of this Code.

**16.5.4.6 Minor Interior Alterations.**

An occupancy permit is not required for minor interior alterations during which the building would be considered occupied, and which in the judgment of the Code Enforcement Officer does not constitute a change in use of the building.

**16.5.5 Temporary Housing.**

**16.5.5.1 Purpose.**

The intent of this Section is to provide temporary housing for resident owners (exclusive of corporations, trusts and estates) and their immediate families who have lost primary dwellings through fire or natural disaster.

**16.5.5.2 Dwellings Uninhabitable by Disaster.**

In case a fire or natural disaster destroys, or damages, or renders a dwelling or dwelling unit uninhabitable, the following apply:

- A. The dwelling owner may apply to the CEO for a permit to place a mobile home on the lot as a temporary residence for the dwelling owner for a period of six months;
- B. The applicant must file such an application within six months from the date of the disaster, and agree in writing, that a time limit of six months is acceptable. Proof of financial ability to reconstruct the building must be furnished;
- C. If, at the end of six months, substantial work has been completed to the satisfaction of the CEO, the permit may be extended for an additional six months. No further extensions may be granted;
- D. A multifamily dwelling may be temporarily replaced by a single mobile home unit for the use of the dwelling owner only; and
- E. Setback requirements may be waived for temporary mobile homes by the CEO, provided matters of public health and safety are not impaired.

**16.5.6 Mobile Home Parks, Seasonal Trailer Parks, and Campgrounds.**

**16.5.6.1 Permit Required.**

No person, firm, corporation, or other legal entity may establish or maintain a mobile home park, seasonal trailer park or campground within the Town without a permit issued in conformity with the provisions of this Code. It is the park operator's responsibility to obtain the permit.

**16.5.6.2 Application.**

Application for a mobile home park, seasonal trailer park or campground permit must be filed with the Code Enforcement Officer, who will present said application to the Planning Board for review as a subdivision, except that permit renewals are not subject to Board review. The Board must review the proposal in accordance with the standards contained herein and inform the CEO of its decision. The CEO shall then act on the application as required.

**16.5.6.3 Fee and Expiration.**

Each application for a permit or a renewal thereof must be accompanied by a fee as established by the Town Council, for a mobile home park, seasonal trailer park or campground designed for the accommodation of no more than ten (10) mobile homes, trailers, or tent sites, and an additional fee as established by the Town Council, for each additional mobile home, trailer or tent site, located at the site. (See Appendix A for annual mobile home park fee schedule.) Permits expire on the first day of April next following date of issuance. Before any permit is renewed, the premises are subject to inspection by the health officer and CEO. If all requirements of this and other federal, state and local laws have been complied with, the same is to be certified and the permit renewed.

**16.5.6.4 Permit Display.**

Permits issued under this Section must be conspicuously posted on the premises at all times and are not transferable.

**16.5.6.5 Revocation.**

The CEO is authorized to revoke any permit issued under this Section pursuant to the terms of this Code, if after due investigation, it is determined the holder thereof has violated any of the provisions of this or any applicable code, law or statute.

**16.5.7.1 Street-numbering Map.**

A. All buildings must bear a distinctive street number in accordance with and as designated upon the street-numbering map on file with the Town's assessing department. The Town assessor is responsible to maintain and keep current said map.

B. No person may affix, or allow to be affixed, a different street number from the one designated on the street-numbering map.

(Ordained 9/26/11; effective 10/27/11)

**16.5.7.2 Display of Number.**

The number is to be displayed upon the front of the building and/or on the side facing the street. The number must be plainly visible from the street. Owners of buildings and houses that are set back out of view from the road must place a post or sign at the driveway entrance with the specified numbers. Said post/sign is not considered a structure which must conform to zoning ordinance setbacks. In place of a post/sign, the number may be affixed to a mailbox. Said post/sign must be placed out of the Town's right-of-way and be six feet in height. (Ordained 9/26/11; effective 10/27/11)

**16.5.7.3 Multifamily Houses or Apartment Buildings.**

For multifamily houses or apartment buildings, the house number is to be displayed as outlined in Section 16.5.7.2. Each individual apartment or living unit must be clearly sub-lettered.

(Ordained 9/26/11; effective 10/27/11)

**16.5.7.4 Numbers—Dimensions and Color.**

Numbers must be no less than three inches in height and contrast in color with the color of the building or background to which they are attached.

(Ordained 9/26/11; effective 10/27/11)

**16.5.7.5 Time Limit for Compliance—Violation—Penalty.**

Any person who, after being notified by the police chief or any law enforcement officer from the Town, fails to comply with any of the provisions of this chapter within the time limit of not more than thirty (30) days

specified in such notice is liable to a fine of not less than fifty dollars (\$50.00), nor more than one hundred dollars (\$100.00), per violation.

(Ordained 9/26/11; effective 10/27/11)

**16.5.8 PLUMBING AND SEPTIC SYSTEM PERMIT FEES** (Ordained 9/26/11; effective 10/27/11)

**16.5.8.1 Applicability.**

This chapter applies to fees charged by the Town for plumbing and subsurface wastewater disposal system permits issued by the Town pursuant to 30-A M.R.S. §4201 et seq. and pursuant to rules promulgated by the Department of Health and Human services (DHHS) under the authority of 30-A M.R.S. §4201 et seq. ("State Plumbing Code"). For purposes of this chapter, the terms contained in this chapter have the meanings given to them in the State Plumbing Code.

**16.5.8.2 Plumbing Permit Fees.**

At the time of issuance by the Town of a plumbing permit pursuant to 30-A M.R.S. §4201 et seq. and the State Plumbing Code, the plumbing permit applicant must pay a fee in accordance with the following schedule and at the rate provided for each classification shown herein:

1. Any person who begins any work for which a permit is required by the State Plumbing Code without first having obtained a permit therefor, if subsequently eligible to obtain a permit, is liable to pay double the permit fee fixed by this chapter for such work. However, this provision does not apply to emergency work when it is proven to the satisfaction of the local plumbing inspector that such work was urgently necessary and that it was not practical to obtain a permit before the commencement of the work. In all such emergency cases, a permit must be obtained within four working days or else a double permit fee as hereinabove provided is to be charged.
2. For the purpose of this chapter a sanitary plumbing outlet on or to which a plumbing fixture or appliance may be set or attached is construed to be a fixture. Fees for reconnection and retest of existing plumbing systems in relocated buildings is to be based on the number of plumbing fixtures, water heaters, etc., involved.
3. The following permit fees are to be charged:
  - a. Minimum fee for all permits, see Appendix A.
  - b. Fixture fee, see Appendix A.
  - c. Reinspection fee, see Appendix A. A reinspection fee must be charged by the local plumbing inspector in those instances when work has not been completed upon an inspection or when work was not in compliance with the State Plumbing Code.
  - d. When only new water distribution and/or drainage pipes are installed or relocated in a building, but no fixtures installed, the fee is as set out in Appendix A.
  - e. A hook-up fee as set out in Appendix A is to be charged for the connection of a mobile home which bears the Housing and Urban Development (HUD) seal or a modular home which bears the Manufactured Housing Board seal to a building sewer.
  - f. A hook-up fee as set out in Appendix A is to be charged for connection to a public sewer when piping is installed beyond the jurisdiction of the sanitary district.
  - g. Relocated mobile homes, modular homes or any other similar structures are considered as new conventional stickbuilt structures and a plumbing fixture fee is to be charged based on this section.
  - h. A permit is valid only for the named applicant but may be transferred by payment of a transfer fee as set out in Appendix A.

**16.5.8.3 Subsurface Wastewater Disposal System Fees.**

A. Prior to the local plumbing inspector's issuance of a subsurface wastewater disposal system permit, the permit applicant must pay the local plumbing inspector a permit fee calculated in accordance with schedule set out in Appendix A.

B. Late Permit Fee. A person who starts construction without first obtaining a subsurface wastewater disposal permit must pay double the permit fee indicated in subsection A of this section.

## **Chapter 16.6 DECISION APPEAL, VARIANCE and OTHER REQUESTS**

### **16.6.1 Purpose.**

This chapter describes the minimum requirements for aggrieved parties to file an appeal under this title and related State statutes, or to seek the granting of a special exception as found in Chapter 16.3; as well as a variance, or miscellaneous variation request to the standards as provided herein.

### **16.6.2 Appeal of Planning Board, Board of Appeals, or Port Authority Decision.**

A. An aggrieved party with legal standing may appeal a final decision of the Planning Board to the York County Superior Court in accordance with Maine Rules of Civil Procedures Section 80B, within forty-five (45) days from the date the decision by the Planning Board was rendered.

B. An aggrieved party with legal standing may appeal a final decision of the Board of Appeals to the York County Superior Court in accordance with Maine Rules of Civil Procedures Section 80B, within forty-five (45) days from the date the decision by the Board of Appeals was rendered.

C. An aggrieved party with legal standing may appeal a final decision of the Port Authority to the York County Superior Court in accordance with Maine Rules of Civil Procedures Section 80B, within forty-five (45) days from the date the decision by the Port Authority was rendered.

### **16.6.3 Appeal of Code Enforcement Officer Decision.**

A Code Enforcement Officer decision may be appealed to the Board of Appeals as provided in Section 16.4.1.

### **16.6.4 Appeals/requests to Board of Appeals.**

For the purposes of this chapter an appeal or request means any of the following:

#### **16.6.4.1 Administrative Decision Appeal.**

When the Board of Appeals reviews an Administrative Decision Appeal of a decision made by the Code Enforcement Officer, the Board of Appeals may receive new evidence and testimony consistent with this Code and the rules of the Board of Appeals. At the conclusion of the hearing and deliberation, the Board of Appeals may uphold, modify, or reverse the decision of the Code Enforcement Officer.

#### **16.6.4.2 Variance Request.**

A. A variance may be granted only by the Board of Appeals under the following conditions:

1. for a reduction in dimensional requirements related to height, area and size of structure, or size of yards and open spaces;
2. the use is not prohibited by this Code; and
3. only if the strict application of the terms of this Code would result in “undue hardship.” The term “undue hardship” means the applicant must demonstrate all of the following:
  - a. The land in question cannot yield a reasonable return unless a variance is granted.
  - b. The need for a variance is due to the unique circumstances of the property and not to the general conditions in the neighborhood.
  - c. The granting of a variance will not alter the essential character of the locality.
  - d. The hardship is not the result of action taken by the applicant or a prior owner.

B. Notwithstanding Section 16.6.4.2A, the Board of Appeals may grant a variance to an owner of a residential dwelling for the purpose of making that dwelling accessible to a person with a disability who resides in, or regularly uses, the dwelling. The Board of Appeals must restrict any variance granted under this subsection solely to the installation of equipment or the construction of structures necessary for access to, or egress from, the dwelling by the person with the disability.

The Board of Appeals may impose conditions on the variance, including limiting the variance to the duration of the disability or to the time that the person with the disability lives in the dwelling. The term “structures necessary for access to or egress from the dwelling” includes railing, wall or roof systems necessary for the safety or effectiveness of the structure.

C. A copy of each variance request within the Shoreland Overlay Zone, including the application and all supporting information supplied by the applicant, must be forwarded by the Code Enforcement Officer to the Commissioner of the Maine Department of Environmental Protection at least twenty (20) days prior to action by the Board of Appeals. Any comments received from the Commissioner prior to the action by the Board of Appeals will be made part of the record to be taken into consideration by the Board of Appeals.

D. The Board of Appeals must limit any variance granted as strictly as possible to ensure conformance with the purposes and provisions of this Code to the greatest extent possible, and in doing so may impose such conditions of approval to a variance as it deems necessary. The party receiving the variance must comply with any conditions imposed.

#### **16.6.4.3 Miscellaneous Variation Request.**

The Board of Appeals may hear, decide and approve variations in:

- A. Nonconformance as prescribed in Article III of Chapter 16.7;
- B. Parking, Loading and Traffic Standards contained in Article IX of Chapter 16.8;
- C. Sign Violation and Appeal Standards contained in Section 16.8.10.3; or
- D. Accessory Dwelling Units Standards contained in Article XXV of Chapter 16.8.

#### **16.6.4.4 Special Exception Use Request.**

A. The Board of Appeals will hear, decide and may grant an applicant's Special Exception Use request where authorized in Chapter 16.3, for any application excluded from Planning Board review as stated in Section 16.10.3.2, if the proposed use meets the criteria set forth in Section 16.6.6, Basis for Decision.

B. The Planning Board will review, decide and may approve an applicant's Special Exception Use request where the proposed project requires Planning Board review as defined in Section 16.10.3.2 or is located in a Shoreland or Resource Protection Overlay Zone. The Planning Board must find the proposed project and use meets the criteria set forth in Section 16.10.8.3.4 and 16.6.6.

#### **16.6.5 Board of Appeals Appeal/Request Filing Procedures.**

##### **16.6.5.1 Making an Appeal/Request.**

An administrative decision appeal, variance request, or miscellaneous variation request may be submitted to the Board of Appeals. An administrative appeal must be submitted within thirty (30) days of the date of the official, written decision being appealed. Other requests may be filed at will.



## RECODIFICATION - ORDAINMENT – 07/26/2010

(With amendments Ordained 9/26/11; 1/23/12; 5/30/12; 9/24/12; 3/25/13; 6/10/13; 1/27/14)

A. The appeal or request must be filed with the Code Enforcement Officer on forms approved by the Board of Appeals and the party must specifically state on such forms the grounds for such appeal or request, including claimed discrepancies in the interpretation of this Code, and reasons why the appeal or request should be granted. Incomplete applications for appeals and/or requests will not be accepted. Upon receipt of an appeal or request application, the Code Enforcement Office must stamp a receipt date on the appeal or required form. Said date constitutes the filing date of the appeal or request. Applications for appeals or requests must include the following:

1. The appeal or request must be made by the property owner, an aggrieved party or their respective duly authorized agent.
2. The appeal or request must include a concise written statement indicating what relief is requested and why the appeal or request should be granted.
3. Where the appeal or request is made from a decision by the Code Enforcement Officer, the applicant must submit plans, maps and related documentation to the Code Enforcement Office for distribution to the Board of Appeals members at least two weeks prior to the meeting of the Board of Appeals. A minimum of ten (10) sets of all submissions is required.
4. The Board of Appeals must hold a public hearing on an appeal or request within thirty-five (35) days of its receipt of a complete written application, unless this time period is extended by the applicant and BOA.

B. At any time between the initial acceptance by the Code Enforcement Officer of an appeal/request and final approval or denial of the appeal/request by the Board of Appeals, the owner or applicant must allow members of the Board of Appeals full access to the subject property, not including building interiors, without obtaining prior permission, written or oral.

### **16.6.5.2 Hearing and Notice.**

A. Before taking any action on any appeal/ request, the Board of Appeals must hold a public hearing and provide the following notifications:

1. By mail at least seven (7) and not more than fourteen (14) days prior to the scheduled hearing date, to owners of abutting property that an appeal/ request is made, of the nature of the appeal/ request and of the time and place of the public hearing thereon.; and
2. Notice of all such actions must also be published in a newspaper of general circulation in the Town at least seven days prior to the public hearing.

B. Failure of any property owner to receive a notice of public hearing will not necessitate another hearing or invalidate any action by the Board of Appeals.

### **16.6.5.3 Notification and Timing Constraints.**

Following the filing of an appeal/request the Code Enforcement Officer must notify the Board of Appeals, Planning Board and Conservation Commission of the filing. The appeal or request must be complete for hearing at a subsequent meeting of the Board of Appeals occurring no less than ten (10) days after the mailing of notices but within thirty (30) days of the appeal filing date.

**16.6.5.4 Decisions of the Board of Appeals.**

- A. The person filing the appeal or request has the burden of proof.
- B. A minimum of four (4) like votes is required for a decision by the Board of Appeals, except on procedural matters.
- C. The Board of Appeals must decide the appeal or request within thirty (30) days after the close of the hearing, and issue a written decision.
- D. Written notice of the decision of the Board of Appeals must be sent to the appellant or petitioner, the Code Enforcement Officer, Conservation Commission, Planning Board and municipal department heads within seven (7) days of the decision. The vote of each member must be part of the record. The written notice of the decision of the Board of Appeals must include the statement of findings. In the case of denials, the statement of findings must include the reason for the denial.

**16.6.5.5 Order of Review.**

- A. Where a special exception request or appeal is necessary as an integral part of a development review process, Board of Appeals action is encouraged prior to Planning Board review where required. The findings of the Board of Appeals as well as any file material must be made available to the Planning Board.
- B. The Planning Board may give approval to the preliminary plan as an overall development prior to the applicant filing an appeal/request.

**16.6.5.6 Special Exception Referral.**

- A. Before granting any special exception, the Board of Appeals may refer the application to the Planning Board and/or Port Authority, for a report prior to any subsequent BOA review of the application.
- B. The Planning Board and/or Port Authority report must be considered informational in character, and may take into consideration the effect of the proposal upon the character of the neighborhood or any other pertinent data.
- C. The Planning Board and/or Port Authority report must be submitted to the BOA for its consideration prior to the officially scheduled time of public hearing on the request.

**16.6.5.7 Venue and Representation.**

At any hearing, a party may appear by agent or attorney. Hearings may be continued to other times/places.

**16.6.5.8 Code Enforcement Officer Attendance.**

The CEO or designated assistant must attend all hearings and may present to the BOA all plans, photographs, or other material the CEO deems appropriate for an understanding of the appeal/request.

**16.6.5.9 Appellant's Case First.**

The appellant's case must be heard first. To maintain orderly procedure, each side shall proceed without interruption. Questions may be asked through the chair. All persons at the hearing shall abide by the order of the chairperson.

**16.6.5.10 Expiration of Approval.**

A. Approvals granted under the provisions of this chapter expire if work or change in use involved is not commenced within six months of the date on which approval is granted, or if the work or change in use is not substantially completed within one year of the date on which such approval is granted, unless as otherwise provided for in the approval decision.

B. When circumstances are such that a plan with an approved appeal or special exception is required to be reviewed by another agency (e.g., DEP, Planning Board, Port Authority), any period the plan is at that agency, from time of submission to time of decision inclusive, verified by recorded documentation, will not be counted as part of the cumulative time periods described in the Section above.

C. Should a successful appellant not be able to commence and/or substantially complete the work or change in use before the time constraints contained in 16.6.5.10A above, the appellant may reappear before the Board before the original approval expires and request an extension of the approval.

D. Such a request must be submitted in writing to the Code Enforcement Officer prior to the date of said approval expiration.

**16.6.5.11 Reconsideration.**

In accordance with 30-A M.R.S. §2691(3)(F), the Board of Appeals may reconsider any decision within forty-five (45) days of its prior decision.

A. A request for the Board of Appeals to reconsider a decision must be filed with the Code Enforcement Officer within ten (10) days of the decision that is to be reconsidered. A vote to reconsider and the action taken on that reconsideration must occur and be completed within forty-five (45) days of the date of the vote on the original decision. Reconsideration of a decision requires a positive vote of the entire Board, and proper notification to the landowner, petitioner, Planning Board, the Town Planner, including abutters and those who testified at the original hearing(s). The Board may conduct additional hearings and receive additional evidence and testimony.

B. Appeal of a reconsidered decision to Superior Court must be made within fifteen (15) days after the decision on reconsideration.

**16.6.5.12 Second Appeals/Requests.**

If the Board of Appeals denies an appeal/request, a second appeal/request of a similar nature may not be brought before the BOA within one year from the date of original denial, unless the appellant submits new evidence and the BOA, by formal action, decides the evidence is significant and warrants a new hearing, or unless the BOA finds in its sole and exclusive judgment that an error or mistake of law or misunderstanding of facts has been made.

**16.6.5.13 Fees.**

The appellant must pay a fee for filing an appeal or special exception request in an amount as set by the Town Council.

**16.6.6 Basis for Decision.**

**16.6.6.1 Conditions.**

- A. In hearing appeals/requests under this Section, the Board of Appeals must first establish that it has a basis in law to conduct the hearing and decide the question.
- B. In hearing appeals/requests under this Section, the Board of Appeals must use the following criteria as the basis of a decision, the:
  - 1. Proposed use will not prevent the orderly and reasonable use of adjacent properties or of properties in adjacent use zones;
  - 2. Use will not prevent the orderly and reasonable use of permitted or legally established uses in the zone wherein the proposed use is to be located, or of permitted or legally established uses in adjacent use zones;
  - 3. Safety, the health, and the welfare of the Town will not be adversely affected by the proposed use or its location; and
  - 4. Use will be in harmony with and promote the general purposes and intent of this Code.

**16.6.6.2 Factors for Consideration.**

In making such determination, the Board of Appeals must also give consideration, among other things, to:

- A. The character of the existing and probable development of uses in the zone and the peculiar suitability of such zone for the location of any of such uses;
- B. The conservation of property values and the encouragement of the most appropriate uses of land;
- C. The effect that the location of the proposed use may have upon the congestion or undue increase of vehicular traffic congestion on public streets or highways;
- D. The availability of adequate and proper public or private facilities for the treatment, removal or discharge of sewage, refuse or other effluent (whether liquid, solid, gaseous or otherwise) that may be caused or created by or as a result of the use);
- E. Whether the use, or materials incidental thereto, or produced thereby, may give off obnoxious gases, odors, smoke or soot;
- F. Whether the use will cause disturbing emission of electrical discharges, dust, light, vibration or noise;
- G. Whether the operations in pursuance of the use will cause undue interference with the orderly enjoyment by the public of parking or of recreational facilities, if existing, or if proposed by the Town or by other competent governmental agency;
- H. The necessity for paved off-street parking;

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(With amendments Ordained 9/26/11; 1/23/12; 5/30/12; 9/24/12; 3/25/13; 6/10/13; 1/27/14)

- I. Whether a hazard to life, limb or property because of fire, flood, erosion or panic may be created by reason or as a result of the use, or by the structures to be used, or by the inaccessibility of the property or structures thereon for the convenient entry and operation of fire and other emergency apparatus, or by the undue concentration or assemblage of person upon such plot;
- J. Whether the use, or the structures to be used, will cause an overcrowding of land or undue concentration of population; or, unsightly storage of equipment, vehicles, or other materials;
- K. Whether the plot area is sufficient, appropriate and adequate for the use and the reasonably anticipated operation and expansion thereof;
- L. Whether the proposed use will be adequately screened and buffered from contiguous properties;
- M. The assurance of adequate landscaping, grading, and provision for natural drainage;
- N. Whether the proposed use will provide for adequate pedestrian circulation;
- O. Whether the proposed use anticipates and eliminates potential nuisances created by its location;
- P. The satisfactory compliance with all applicable performance standard criteria contained in Chapter 16.8 and 16.9.

### **16.6.6.3 Additional Special Exception Conditions.**

Special exception approvals may be subject to additional conditions as determined by the BOA, including the following:

- A. Front, side or rear yards in excess of minimum requirements;
- B. Modifications of the exterior features of buildings or other structures;
- C. Limitations on the size of buildings and other structures more stringent than the minimum or maximum requirements;
- D. Regulation of design of access drives, sidewalks and other traffic features;
- E. Off-street parking and loading spaces in excess of the minimum requirements; or
- F. Restrictions on hours of operation.

### **16.6.6.4 Findings of Fact.**

After reaching a decision on an appeal/request under this Section, the Board of Appeals must verify on the record its findings of fact supporting the basis of its decision.

### **16.6.6.5 Outstanding Violations.**

No variance, special exception, or miscellaneous variation request may be granted for premises on which outstanding violations of this Code exist, unless the effect of such variance, special exception, or miscellaneous variation would remedy all such violations.

**16.6.6.7 Appeals and Variances.** (Ordained 9/26/11; effective 10/27/11)

The Board of Appeals may, upon written application of an aggrieved party, hear and decide appeals from determinations of the Code Enforcement Officer in the administration of the provisions of this article. The Board of Appeals may grant a variance from the requirements of Chapter 16.9, Article VIII, Floodplain Management, Section 16.9.8.1, et seq, consistent with state law and the following criteria:

- A. Variances may not be granted within any designated regulatory floodway if any increase in flood levels during the base flood discharge would result.
- B. Variances may be granted only upon:
  - 1. A showing of good and sufficient cause; and
  - 2. A determination that should a flood comparable to the base flood occur, the granting of a variance will not result in increased flood heights, additional threats to public safety, public expense, or create nuisances, cause fraud or victimization of the public or conflict with existing local laws or ordinances; and
  - 3. A showing that the existence of the variance will not cause a conflict with other state, federal or local laws or ordinances; and
  - 4. A determination that failure to grant the variance would result in “undue hardship,” which in this subsection means:
    - a. That the land in question cannot yield a reasonable return unless a variance is granted, and
    - b. That the need for a variance is due to the unique circumstances of the property and not to the general conditions in the neighborhood, and
    - c. That the granting of a variance will not alter the essential character of the locality, and
    - d. That the hardship is not the result of action taken by the applicant or a prior owner.
- C. Variances may only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.
- D. Variances may be issued by a community for new construction, substantial improvements, or other development for the conduct of a functionally dependent use provided that:
  - 1. Other criteria of this section and Section 16.9.8.8I are met; and
  - 2. The structure or other development is protected by methods that minimize flood damages during the base flood and create no additional threats to public safety.
- E. Variances may be issued by a community for the reconstruction, rehabilitation or restoration of structures listed on the National Register of Historic Places or a State Inventory of Historic Places, without regard to the procedures set forth in subsections A through D of this section.
- F. Any applicant who meets the criteria of subsections A through E of this section is to be notified by the Board of Appeals in writing over the signature of the chairperson of the Board of Appeals that:
  - 1. The issuance of a variance to construct a structure below the base flood level will result in greatly increased premium rates for flood insurance up to amounts as high as twenty-five dollars (\$25.00) per one hundred dollars (\$100.00) of insurance coverage;
  - 2. Such construction below the base flood level increases risks to life and property; and
  - 3. The applicant agrees in writing that the applicant is fully aware of all the risks inherent in the use of land subject to flooding, assumes those risks and agrees to indemnify and defend the municipality against any claims filed against it that are related to the applicant’s decision to use land located in a floodplain and that the applicant individually releases the municipality from any claims the applicant may have against the municipality that are related to the use of land located in a floodplain.

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G. The Board of Appeals must submit to the Planning Board a report of all variance actions, including justification for the granting of the variance and an authorization for the Code Enforcement Officer to issue a flood hazard development permit, which includes any conditions to be attached to said permit.

## **Chapter 16.7 GENERAL DEVELOPMENT REQUIREMENTS**

### **Article I. Purpose**

#### **16.7.1 General.**

This chapter outlines requirements for conformity; discusses nonconformance and waivers; and defines various development review thresholds and requirements to further the safe and orderly development of the Town.

### **Article II. Conformity**

#### **16.7.2.1 Conformity Required.**

No building structure or land may hereafter be used or occupied, and no building or structure or part thereof may hereafter be erected, constructed, expanded, moved, or altered and no new lot may be created except in conformity with all of the regulations herein specified for the zone where it is located, unless such structure or use exists as a legally nonconforming use, or a variance is granted. See Chapter 8, Article VII, for specific requirements related to septic waste disposal systems.

#### **16.7.2.2 Minimums and Uniformity.**

The regulations specified by this title for each class of district are minimum requirements and apply uniformly to each class or kind of structure or land

#### **16.7.2.3 Land within Street Lines.**

Land within the lines of a street on which a lot abuts is not considered as part of such lot for the purposes of meeting the area/frontage requirements of Chapter 16.3, notwithstanding the fact that the fee to such land may be in the owner of such lot

#### **16.7.2.4 Yard, Parking or Loading Space.**

No part of a yard, or other space or off-street parking or loading space about or in connection with any building, and required for the purpose of complying with this title, may be included as part of a yard, open space or off-street parking or loading space similarly required for any other building, except as authorized in Sections 16.8.9.3G and 16.8.9.4.

#### **16.7.2.5 Zone Boundary Line Extension.**

Where a zoning district boundary line divides a lot, the regulations applicable to either zone of such lot may extend not more than fifty (50) feet into the portion in the other zone(s), except when a less restrictive portion abuts the resource protection zone.

A. Before granting any such extension, the Planning Board must determine that the proposed use of the extended portion will:

1. Not prevent the orderly and reasonable use of properties in the adjacent zone;
2. Be in harmony with the character of the adjacent zone;
3. Not adversely affect the property values of adjacent zone's immediate neighborhoods;
4. Not create any traffic hazards or undue traffic congestion on streets in the adjacent zone;
5. Not give off obnoxious gases, odors, smoke or soot;
6. Not cause disturbing emission of electrical discharges, dust, light, vibration or noise; and
7. Be adequately screened and buffered from the adjacent zone.



B. The Planning Board may require a study to be performed, or commissioned, by the applicant to insure compliance with the above requirements.

**16.7.2.6 Averaging Building Setbacks.**

Building setback from the street line need not be greater than the average of the setback distances of the buildings on the lots next thereto on either side. (Ordained 9-26-11; Effective 10-27-11)

**Article III. Nonconformance** (Ordained 9-26-11; Effective 10-27-11)

**16.7.3 Purpose.**

The purpose of this Code is to promote land use conformities. The purpose of this Article is to regulate nonconforming lots, uses, and structures.

**16.7.3.1 Prohibitions and Allowances.**

A. Except as otherwise provided in this Article, a nonconforming condition must not be permitted to become more nonconforming.

B. Nonconforming vacant lots of record may be developed, maintained or repaired.

C. Nonconforming uses may continue, may be changed to an equal or more appropriate nonconforming use, or be changed to a conforming use.

**16.7.3.2 Transfer of Ownership.**

Legally nonconforming structures, lots, and uses may be transferred, and the new owner may continue the nonconforming use or continue to use the nonconforming structure and/or lot, subject to the provisions of this Code.

**16.7.3.3 Repair and Maintenance.**

This Code allows the normal upkeep and maintenance of nonconforming uses and structures including repairs or renovations that do not involve expansion of the nonconforming use or structure that is not otherwise permitted by this Code, and such other changes in a nonconforming use or structure as Federal, State, or local building and safety codes may require.

**16.7.3.4 Discontinued Resumption Prohibited.**

A lot on, or structure in, which a nonconforming use is discontinued for a period exceeding one (1) year, or which is superseded by a conforming use, loses its status as a nonconforming use. The uses of the land or structure must thereafter meet the provisions of this Code. This provision does not apply to the resumption of a use of a residential structure where it can be demonstrated that the structure has been used or maintained for residential occupancy during the preceding five (5) year period.

**16.7.3.5 Types of Nonconformance.** (Ordained 9-26-11; Effective 10-27-11)

**16.7.3.5.1 Nonconforming Use Continuance.**

The use of land, or structure, lawful at the time such use or structure was created, may continue although such use or structure does not meet the provisions of this Code.

**16.7.3.5.2 Nonconforming Use Expansion.**

Expansion of nonconforming uses is prohibited, except nonconforming residential uses may, be expanded within existing residential structures or within expansions of such structures as allowed in Section 16.7.3.4., Nonconforming Residential Use in Commercial Zones Expansion.

**16.7.3.5.3 Nonconforming Residential Use in Commercial Zones Expansion.**

Notwithstanding the above limitations on expansion of nonconforming use, a nonconforming residential use located within the Commercial zones may be expanded. Where the expansion of the residential use involves an expansion of a structure, the structure must be expanded in conformity with the dimensional requirements contained in this Code. If the proposed structure expansion cannot meet the dimensional requirements of this Code, the application must be submitted to the Board of Appeals for review as a Miscellaneous Variation Request. In reviewing all such applications, the Board of Appeals must use the criteria established herein, and then may approve proposed dimensional requirement variations.

**16.7.3.5.4 Nonconforming Structure Relocation.**

A. A nonconforming structure may be relocated within the boundaries of the parcel on which the structure is located provided the site of relocation conforms to all dimensional requirements to the greatest practical extent as determined by the Board of Appeals or Planning Board (in cases where the structure is located in a Shoreland Overlay or Resources Protection Overlay Zone), and provided the applicant demonstrates the present subsurface sewage disposal system meets the requirements of State law and the State of Maine Subsurface Wastewater Disposal Rules, or a new system can be installed in compliance with the law and said Rules. In no case may the relocation of a structure be permitted that causes the structure to be more nonconforming. See Chapter 16.8, Article VII, for other specific requirements related to septic waste disposal systems.

B. In determining whether the structure relocation meets the setback to the greatest practical extent, the Board of Appeals or Planning Board (in cases where the structure is located in a Shoreland Overlay or Resources Protection Overlay Zone.), must consider the size of the lot, the slope of the land, the potential for soil erosion, the location of other structures on the property and on adjacent properties, the location of the septic system and other on-site soils suitable for septic systems, and the type and amount of vegetation to be removed to accomplish the relocation.

C. When it is necessary to remove vegetation within the water or wetland setback area to relocate a structure, the Board of Appeals or Planning Board (in cases where the structure is located in a Shoreland Overlay or Resources Protection Overlay Zone.), may require replanting of native vegetation to compensate for the destroyed vegetation, and may restrict mowing and pruning of the replanted native vegetation to encourage a more natural state of growth. Replanting will be required as follows:

1. Trees removed to relocate a structure must be replanted with at least one native tree, six (6) feet in height, for every tree removed. If more than five trees are planted, no one species of tree can be used to make up more than 50% of the number of trees planted. Replaced trees must be planted no farther from the water or wetland than the trees removed.
2. Other woody and herbaceous vegetation and ground cover that is removed, or destroyed, to relocate a structure must be reestablished. An area at least the same size as the area where vegetation and/or ground cover was disturbed, damaged, or removed must be reestablished within the setback area. The vegetation and/or ground cover must consist of native vegetation and/or ground cover similar to that disturbed, destroyed or removed.

Prior to the commencement of onsite construction, areas to remain undisturbed must be clearly marked with stakes and caution tape. Removal of the stakes, caution tape, silt fences, and such other materials used during construction, is required at the completion of the onsite work, but not before permission to remove such has been given in writing by the Code Enforcement Officer.

3. Where feasible, when a structure is relocated on a parcel, the original location of the structure must be replanted with vegetation consisting of grasses, shrubs, trees or a combination thereof.

D. If the total amount of floor area and volume of the original structure can be relocated beyond the required setback area, no portion of the relocated structure may be constructed at less than the setback requirement for a new structure. When it is necessary to remove vegetation to reconstruct a structure, vegetation will be replanted in accordance with Section 16.7.3.5.4.C, Nonconforming Structure Relocation. Application for a demolition permit for any structure that has been partially damaged must be made to the Code Enforcement Officer.

**16.7.3.5.5 Nonconforming Structure Repair and/or Expansion.** (Ordained 9-26-11; Effective 6-28-11)

A. A nonconforming structure may be repaired or maintained and may be expanded in conformity with the dimensional requirements, such as setback, height, etc., as contained in this Code. If the proposed expansion of a nonconforming structure cannot meet the dimensional requirements of this Code, the Board of Appeals or the Planning Board (in cases where the structure is located in a Shoreland Overlay or Resources Protection Overlay Zone) will review such expansion application and may approve proposed changes provided the changes are no more nonconforming than the existing condition and the Board of Appeals or the Planning Board (in cases where the structure is located in a Shoreland Overlay or Resources Protection Overlay Zone) makes its decision per section 16.6.6.2.

B. If the proposed expansion of a structure is: (1) a vertical expansion that follows the existing building footprint and (2) will not result in setbacks less than those existing, approval by the Board of Appeals is not required if the structure is not located in a Shoreland Overlay or Resources Protection Overlay Zone. Applications for such development will be reviewed and may be approved by the Code Enforcement Officer or the Planning Board if the structure is located in a Shoreland Overlay or Resources Protection Overlay Zone. This subsection does not apply to any proposed vertical expansion of a patio, deck or accessory structure permitted to be closer to a water body or to a principal structure in accordance with Table 16.9 – Minimum Setbacks from Wetlands and Water Bodies.

C. Except in the Residential - Village (R-V) zone, minimum setbacks of residential storage sheds that are less than one hundred-twenty-one (121) square feet one-story residential garages that are less than five hundred and seventy-seven (577) square feet, and decks less than two hundred fifty-one (251) square feet, may be one-half the minimum rear and side yard setbacks providing the lots are legally nonconforming.

**16.7.3.5.6 Nonconforming Structure Reconstruction.**

A. Any nonconforming structure which is located less than the required setback from a water body, tributary stream, or wetland and which is removed, damaged or destroyed, by any cause, by more than 50% of the market value of the structure before such damage, destruction or removal, may be reconstructed or replaced provided that a permit is obtained within eighteen (18) months of the date of said damage, destruction, or removal, and provided that such reconstruction or replacement is in compliance with the water body, tributary stream or wetland setback requirement to the greatest practical extent as determined by the Planning Board

(in cases where the structure is located in a Shoreland Overlay or Resources Protection Overlay Zone) or Code Enforcement Officer, in accordance with this Code.

B. In no case will a structure be reconstructed or replaced so as to increase its non-conformity. If the reconstructed or replacement structure is less than the required setback it may not be any larger than the original structure, except as allowed pursuant to Section 16.7.3.5.5, Nonconforming Structures Repair and/or Expansion, as determined by the nonconforming floor area and volume of the reconstructed or replaced structure at its new location.

C. If the total amount of floor area and volume of the original structure can be reconstructed beyond the required setback area, no portion of the reconstructed structure may be reconstructed at less than the setback requirement for a new structure. When it is necessary to remove vegetation to reconstruct a structure, vegetation will be replanted in accordance with Section 16.7.3.5.4.C, Nonconforming Structure Relocation. Application for a demolition permit for any structure that has been partially damaged must be made to the Code Enforcement Officer.

D. Any nonconforming structure which is located less than the required setback from a water body, tributary stream, or wetland and removed, damaged or destroyed by any cause through no fault of action by the owner by 50% or less of the market value of the structure before such damage, destruction or removal, may be reconstructed in-place if a permit is obtained from the Code Enforcement Officer or the Planning Board (in cases where the structure was located in the Shoreland Overlay or Resources Protection Overlay Zone) within twelve (12) months of the established date of damage or destruction.

E. In determining whether the structure reconstruction or replacement meets the setback to the greatest practical extent the Planning Board or Code Enforcement Officer must consider, in addition to the criteria in Section 16.7.3.5.4, Nonconforming Structure Relocation, the physical condition and type of foundation present, if any.

**16.7.3.5.7 Nonconforming Use Expansion.**

Expansion of a nonconforming use of any structure or land area other than that occupied as such when created is not permitted with the following exceptions:

A. uses in conformity with Chapter 16.7; and

B. nonconforming residential uses located within the Resource Protection Overlay, or Shoreland Overlay Zone with Planning Board approval, may expand by thirty (30) percent or less of the structure, in floor area or volume, during the lifetime of the structure if the applicant can prove the proposal is consistent with the review standards in Section 16.3.2.17.D.2.

**16.7.3.5.8 Nonconforming Use Change – Review Authority and Evaluations.**

The reviewing authority per subsections A B. and C below, may require evaluations be prepared by a person certified and/or qualified to perform the required evaluation. It is the burden and responsibility of the applicant to bear the costs for such evaluations. In the event there are existing official maps, data and/or reports for general use, the applicant is encouraged to submit copies of these documents to the reviewing authority. In determining that no greater adverse impact will occur, the applicant may be required to submit an evaluation in writing regarding the probable effects on public health and safety, erosion and sedimentation, water quality, fish and wildlife habitat, vegetative cover, visual and actual points of public access to waters, natural beauty, floodplain management, archaeological and historic resources, and commercial fishing and maritime activities, and other functionally water-dependent uses.

A. Administratively. The Town Planner and the Code Enforcement Officer may approve the change of use of a nonconforming structure where it can be deemed the proposed use is a conforming use and the proposed use does not impact a water body, tributary stream, or wetland. See Section 16.4.3.5.

B. By Board of Appeals. Outside the areas regulated by Shoreland Overlay Zone or Resource Protection Overlay Zone, an existing nonconforming use may be changed to another nonconforming use with approval of the Board of Appeals provided the proposed use is not more nonconforming.

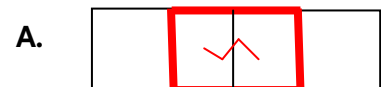
C. By Planning Board. Within areas regulated by Shoreland Overlay Zone or Resource Protection Overlay Zone, an existing nonconforming use may be changed to another nonconforming use with the approval of the Planning Board per Section 16.7.3.5.2.

**16.7.3.5.9 Nonconforming Lots of Record.** (Ordained 1-23-12; Effective 2-23-12)

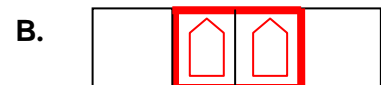
A. Nonconforming Lots: In any district, notwithstanding limitations imposed by other sections of this Code, single noncontiguous lots legally created when recorded may be built upon consistent with the uses in the particular zone. These provisions apply even though such lots fail to meet the minimum requirements for area or width, or both, which are applicable in the zone, provided that yard dimensions and other requirements, not involving area or width, or both, of the lot conform to the regulation for the zone in which such lot is located. Relaxation of yard and other requirements not involving area or width may be obtained only through miscellaneous variation request to the Board of Appeals.

**16.7.3.5.10 Contiguous Non-Conforming Lots.** (Ordained 1-23-12; Effective 2-23-12)

A. Contiguous Nonconforming Lots. If two or more contiguous nonconforming lots or portions thereof are in common ownership and if a combination of such lots or a portion thereof constitutes a lot of nearer conforming size, such combination is deemed to constitute a single lot.



B. Contiguous Built Upon Nonconforming Lots. If there exists a legally created principal structure on each of the contiguous nonconforming lots or portions thereof that would otherwise require the lots to be combined as provided herein, the contiguous lots need not be combined to create a single lot as required by Section A above.



## RECODIFICATION - ORDAINMENT – 07/26/2010

(With amendments Ordained 9/26/11; 1/23/12; 5/30/12; 9/24/12; 3/25/13; 6/10/13; 1/27/14)

C. Contiguous Partially Built Upon Lot. If one or more of the contiguous nonconforming lots is vacant or contains no principal structure, the lots must be combined to the extent necessary to meet the purposes of this Code as required by Section A above.

C.



This subsection does not apply:

1. to any Planning Board approved subdivision which was recorded in the York County Registry of Deeds on, or before July 13, 1977;
2. if one or more of the contiguous lots is served by a public sewer, or can accommodate a subsurface sewage disposal system in conformance with this Code Section 16.8.7.1 – Septic Waste Disposal, and the State of Maine Subsurface Wastewater Disposal Rules; and
  - i. if each lot contains at least 100 feet of shore frontage and at least 20,000 square feet of lot area; or
  - ii. if any lot(s) that do not meet the frontage and lot size requirements of Section 16.3.2.17D.1 are reconfigured or combined so each new lot contains at least 100 feet of shore frontage and 20,000 square feet of lot area.

### C. Single Lot Division.

If two principal structures existing on a single lot legally created when recorded, each may be sold on a separate lot provided the Board of Appeals determines that each resulting lot is as conforming as practicable to the dimensional requirements of this Code. If three or more principal structures existing on a single lot legally created when recorded, each may be sold on a separate lot provided the Planning Board determines that each resulting lot is as conforming as practicable to the dimensional requirements of this Code.

(Ordained 1-23-12; Effective 2-23-12)

### 16.7.3.5.11 Nonconforming Parking or Loading Space. (Ordained 9-26-11; Effective 10-27-11)

A structure and/or use which is nonconforming as to the requirements for off-street loading and/or parking spaces may not be enlarged or added to unless off-street space is provided sufficient to satisfy the requirements of this Code for both the original and addition or enlargement of the structure or use.

### 16.7.3.5.12 Nonconforming Steps. (Ordained 9-26-11; Effective 10-27-11)

The addition of steps and landings, exterior to the structure does not constitute expansion. Such steps are not to be considered part of the structure for such determination. Step landings may not exceed three feet by three feet (3'x3') in size.

### 16.7.3.6 Nonconforming Structures in Shoreland and Resource Protection Overlay Zones.

(Ordained 9-26-11; Effective 10-27-11)

#### 16.7.3.6.1 Nonconforming Structure Expansion.

A nonconforming structure may be added to, or expanded, after obtaining Planning Board approval and a permit from the Code Enforcement Officer. Such addition or expansion must not increase the non-conformity of the structure and must be in accordance with the subparagraphs below.

A. After January 1, 1989, if any portion of a structure is less than the required setback from the normal high-water line of a water body or tributary stream or the upland edge of a wetland, that portion of the structure will not be permitted to expand, as measured in floor area or volume, by thirty percent (30%) or more during the lifetime of the structure.

B. If a replacement structure conforms to the requirements of Section 16.7.3.6.1.A and is less than the required setback from a water body, tributary stream or wetland, the replacement structure will not be permitted to expand if the original structure existing on January 1, 1989, has been expanded by 30% in floor area and volume since that date.

C. Whenever a new, expanded or replacement foundation is constructed under a nonconforming structure, the structure and new foundation must be placed such that the setback requirement is met to the greatest practical extent as determined by the Planning Board, basing its decision on the criteria specified in Section 16.7.3.5.4 B, Nonconforming Structure Relocation. If the completed foundation does not extend beyond the exterior dimensions of the structure, except for expansion in conformity with Section 16.7.3.6.1.A, and the foundation does not cause the structure to be elevated by more than three (3) additional feet, as measured from the uphill side of the structure (from original ground level to the bottom of the first floor sill), it will not be considered to be an expansion of the structure.

#### **16.7.3.6.2 Nonconforming Use Change.**

An existing nonconforming use may be changed to another nonconforming use with the approval of the Planning Board provided the proposed use has no greater adverse impact on any water body or wetland, or on the subject and adjacent properties and resources, including water dependent uses in the Commercial Fisheries/Maritime Uses Overlay Zone than the former use, as determined by the Planning Board. Within the area regulated by Shoreland Overlay Zone or Resource Protection Overlay Zone, for the determination of no greater adverse impact, the Planning Board may require written documentation from the applicant, regarding the probable effects on public health and safety, erosion and sedimentation, water quality, fish and wildlife habitat, vegetative cover, visual and actual points of public access to waters, natural beauty, floodplain management, archaeological and historic resources, and commercial fishing and maritime activities, and other functionally water-dependent uses.

### **Article IV. Waivers**

#### **16.7.4.1 Waiver Authorization.** (Ordained 9-26-11; Effective 10-27-11)

Where the Planning Board finds, due to special circumstances of a particular plan, certain required improvements do not promote the interest of public health, safety and general welfare, or are inappropriate because of inadequacy or lack of connecting facilities adjacent or in proximity to the proposed development, upon written request, it may waive or modify such requirements, subject to appropriate conditions as determined by the Planning Board.

#### **16.7.4.2 Objectives Secured.** (Ordained 9-26-11; Effective 10-27-11)

In granting modifications or waivers, the Planning Board must require such conditions as will, in its judgment, secure substantially the objectives of the requirements so waived or modified.

### **Article V. Other Requirements**

#### **16.7.5.1 Burden of Proof.**

In all instances, the burden of proof is upon the applicant proposing the development

#### **16.7.5.2 Comprehensive Plan.**

Any proposed development, or use, must be in harmony with the Town comprehensive plan guidance adopted into the provisions of this Code.

**16.7.5.3 Site Inspection.**

A. So the Planning Board may be fully informed about the site and in a knowledgeable position to prescribe contour intervals to be employed on topographic maps and grading plans for the development, the applicant must arrange a joint inspection of the site with the Planning Board, or a committee, or member, or individual appointed by the chairperson to act as the Planning Board's representative for such inspection or other Town committee as appropriate.

B. At any time between the initial Planner confirmation of submission contents of an application and final approval or denial of the plan by the Board, the Planner or Board members must have access to the subject property not including building interiors, without obtaining prior permission, written or oral, from the property owner or applicant.

**16.7.5.4 Safe Use.**

The land/water area to be developed must be of such character that it can be used without danger to health, or peril from fire, flood, soil failure or other hazard.

**Article VI. Recreational Land Allocation**

**16.7.6.1 Size.** Reserved for future use.

**16.7.6.2 Character and Configuration.** Reserved for future use.

**16.7.6.3 Waterfront Inclusion.** Reserved for future use.

**Article VII. Development Exaction**

**16.7.7.1 Municipal Space.**

The Planning Board may require the developer provide space for future municipal uses, in accordance with a Council approved plan, on a reimbursable basis with a five-year option after which the space may be sold for other development.

**16.7.7.2 Impact Fees.**

Impact fees, and other like development exactions must be required by the Planning Board, when all legal requirements have been fulfilled in accordance with 30-A M.R.S. §4961-A (e.g., Sewer Connection Fees).

**Article VIII. Land Not Suitable for Development**

**16.7.8.1 Locations and Sewage.**

The Planning Board may not approve portions of any proposed development that:

1. Are situated below sea level;
2. Are located within the one hundred (100) year frequency floodplain as found in the definition;
3. Are located on land which must be filled or drained, or on land created by diverting a watercourse, except the Planning Board may grant approval if central sewage collection and disposal system is provided.
4. Has any part of the development located on filled tidal wetlands.
5. Employs septic sewage disposal and is located on soils rated poor or very poor by the Soil Suitability Guide for Land Use Planning in the State of Maine.